SEVENTH EDITION

THE AGRICULTURAL HOLDINGS ACT 1923

A. J. SPENCER

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THE

AGRICULTURAL HOLDINGS ACT, 1923,

With Explanatory NOTES and General FORMS.

ALSO THE

STATUTORY RULES AND REGULATIONS MADE BY THE MINISTRY OF AGRICULTURE AND FISHERIES THEREUNDER,

AND THE

COUNTY COURT RULES AND FORMS RELATING THERETO.

BY

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Editor of Fifth and Sixth Editions of Dixon's "Law of the Farm," and Twenty-first Edition of Woodfall's "Landlord and Tenant."

SEVENTH EDITION.

LONDON:

STEVENS AND SONS, LIMITED,

119 & 120, CHANCERY LANE,

Law Publishers.

1924.

PRINTED IN GREAT BRITAIN BY
C. F. ROWORTH, 88, FETTER LANE, LONDON, E.C.

PREFACE

TO THE SEVENTH EDITION.

THE Agricultural Holdings Act, 1908, the Agriculture Act, 1920, and the Agriculture (Amendment) Act, 1921, which, with the Corn Production Act, 1917, were dealt with in the Sixth Edition of this work, have since been repealed and the provisions of the three first-named Acts have been consolidated and are now contained in one Act, namely, the Agricultural Holdings Act, 1923, which was itself slightly amended by the Agriculture (Amendment) Act, 1923. The Corn Production Act, 1917, has been wholly repealed.

This repeal and consolidation appeared to call for a new edition of the author's work on the statutory law which so largely affects the relations of landlord and tenant in respect of agricultural, pastoral and market garden holdings, and which is, as a result of the consolidation, now to be found conveniently in one, instead of, as before, in several Acts of Parliament. Since the passing of the Agriculture Act, 1920, there

have been quite a large number of decisions of the Court in the matters dealt with by that Act and the Act of 1908, which it amended, and which are now relevant in relation to the provisions of the Act of 1923, which have taken the place of the former enactments.

The author has endeavoured to notice all these decisions in his notes to the various sections of the present Act and generally to elucidate its provisions for the assistance of those whose interests may be affected by, or who may be professionally concerned, whether as lawyers, valuers, land or estate agents, or otherwise, in questions arising under the Act.

In Appendix I. will be found general forms for use under the Act. Appendix II. contains the relevant County Court Rules and Forms, and Appendix III. the Rules and Regulations issued by the Ministry of Agriculture and Fisheries under the Act. The references to "Dixon" in the book are to the Sixth Edition of Dixon's Law of the Farm, and to "Woodfall" to the Twenty-first Edition of Woodfall's Landlord and Tenant.

AUBREY J. SPENCER.

Lincoln's Inn.
January, 1924.

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THE

AGRICULTURAL HOLDINGS ACT, 1923.

INTRODUCTION.

The Agricultural Holdings Act, 1923, deals with the subject of compensation for improvements effected on agricultural holdings and market gardens, and with various other matters affecting the relations of landlord and tenant on such holdings. It is a consolidation of enactments contained in a series of former statutes and amending statutes which have been repealed, viz., the Agricultural Holdings (England) Act, 1883; the Tenants' Compensation Act, 1890; the Market Gardeners' Compensation Act, 1895; the Agricultural Holdings Act, 1900 (collectively known as the Agricultural Holdings (England) Acts, 1883 to 1900); the Agricultural Holdings Act, 1906; the Agricultural Holdings Act, 1908; the Agricultural Holdings Act, 1913; the Agricultural Holdings Act, 1914; the Agricultural Land Sales (Restriction of Notices to Quit) Act, 1919; Part II. of the Agriculture Act, 1920; and the Agriculture (Amendment) Act, 1921.

The above series of Acts of Parliament has effected important changes in the law relating to holdings of whatever size, either wholly agricultural or pastoral, or in part agricultural and as to the residue pastoral, or in whole or in part cultivated as a market garden.

Previously to the passing of the first of these Acts a tenant was not necessarily entitled to any compensation for improvements executed during his tenancy. On his quitting his holding, the landlord reaped the sole benefit of the improvements (if any) effected by the tenant, in accordance with the legal maxim: "*Quicquid plantatur solo, solo cedit.*" The exception to this rule was, that in several counties, notably Lincolnshire, Leicestershire, and Glamorganshire, compensation for improvements was to some extent provided by the custom of the country. The Agricultural Holdings (England) Act, 1875, also provided compensation for the improvements therein mentioned, but as it was competent for either landlord or tenant to exclude its operation, and the common practice was to exclude it, it had very little effect. The operation of the Act of 1883 and subsequent Acts, however, could not, so far as they provided compensation to tenants for improvements, be excluded.

Sect. 55 (1883).

The general effect of the law now embodied in the Agricultural Holdings Act, 1923, may be considered under seven heads:—

1. Compensation for improvements.
2. Compensation for damage by game.
3. Compensation for disturbance.
4. Notice to quit.
5. Fixtures.
6. Distress.
7. Other matters.

1. *Compensation for Improvements.*

Sect. 1.

The tenant, at the determination of his tenancy, on quitting his holding, is entitled, subject as in the Act mentioned, to compensation for the improvements mentioned in the First Schedule to the Act, and in the case of a tenancy entered upon after January 1, 1921, whether the improvement was or was not one which he

was required to make by the terms of his tenancy. Such compensation is to be measured by the value of the improvements to an incoming tenant, not by their cost to the outgoing tenant. If the tenant chooses, he may claim compensation under the custom of the country or under any agreement in lieu of claiming under the Act for any improvement which is covered by the Act. This option, which was first given by the Act of 1900, was excluded by the Act of 1883.

The First Schedule is divided into three parts. Improvements in the first part are of a permanent nature, such as the erection of buildings, the laying down of permanent pasture, the formation of silos, &c. The tenant is not entitled to compensation for any improvements mentioned in this part of the Schedule, unless the landlord has previously to the execution of the improvement given his consent in writing, or unless it is an improvement brought within the second part of the Schedule in manner hereinafter mentioned. The consent may be given on any terms as to compensation or otherwise. Sched. I. part 1. Sect. 2.

The second part of the First Schedule includes in the first instance only one improvement, viz., Drainage. A tenant intending to drain must give notice to the landlord, not more than three and not less than two months before beginning the improvement, of his intention, and of the manner in which he proposes to execute the improvement. The landlord may agree with him as to the compensation payable, or may execute the improvement himself, and after executing the same "in any reasonable and proper manner which he thinks fit," may charge the tenant 5 per cent., or other percentage substituted therefor by the Minister of Agriculture and Fisheries, on his outlay or an annual sum which will repay the outlay in a specified number of years with interest. The landlord and tenant may dispense with notice and come Sched. I. part 2. Sect. 3.

to an agreement in a lease or otherwise with regard to the improvement. If the landlord does not undertake the improvement, the tenant may execute the improvement himself, and in default of any agreement with the landlord, he will become entitled to compensation under the Acts.

Sched. I. part 3. Improvements mentioned in the third part of the First Schedule are mainly improvements which tend to increase directly the fertility of the soil, and consist in the application of some external substance, such as artificial manure, lime, &c. to the land, or the consumption on the holding by cattle, sheep, pigs, or horses, other than those regularly employed on the holding, of corn, cake, or other feeding stuff not produced on the holding, or of corn proved to have been produced and consumed on the holding. This part also includes laying down temporary pasture with clover, grass, or other seeds, sown more than two years prior to the determination of the tenancy, and repairs to buildings necessary for the proper cultivation or working of the holding, other than buildings which the tenant himself is under an obligation to repair. In

Sect. 48. the case of any holding or part of a holding agreed in writing to be let or treated as a market garden, or held under a contract of tenancy current on 1st January, 1896, and at that date in use or cultivation as a market garden with the knowledge of the landlord, compensation may also be obtained for improvements mentioned in the Third

Sched. III. Schedule (that is to say) the planting of fruit trees or fruit bushes permanently set out, the planting of strawberry plants, and of asparagus, rhubarb, and other vegetable crops which continue productive for two or more years, and the erection or enlargement of buildings for the trade or business of a market gardener, as if these improvements were comprised in the third part of the

Sect. 49, sub-s. 1. First Schedule. If a tenant desires to make an improvement comprised in the Third Schedule on his holding or part of his holding, and the landlord refuses or fails to

agree that the holding or that part of the holding shall be treated as a market garden, the agricultural committee for the area where the holding is situate may direct that sect. 48 shall apply to the holding or that part thereof in respect of all or any of the improvements comprised in the Third Schedule, which direction will give the tenant the right to compensation therefor on the termination of the tenancy, if it is terminated by the landlord's notice to quit. If, however, in such a case the tenancy is terminated by notice to quit given by the tenant or by reason of his bankruptcy or compounding with his creditors, the compensation will not be recoverable from the landlord unless he refuses to accept as tenant some substantial and suitable person produced by the tenant, who will pay all compensation payable under the Act to the outgoing tenant.

The tenant is entitled to compensation for any improvements mentioned in the third part of the First Schedule, whether the landlord has consented to them or not. An agreement cannot, since January 1, 1921, be made for "substituted compensation" in respect of these improvements; but "fair and reasonable" compensation may be substituted by agreement for compensation under the Act in respect of the market garden improvements mentioned in the Third Schedule. Sect. 4. Sect. 49, sub-s. 6.

Compensation is also now obtainable for continuous high-farming, for if a tenant proves to the satisfaction of an arbitrator on quitting his holding that the value of the holding has been increased during his tenancy by the continuous adoption of a standard or system of farming more beneficial to the holding than the standard or system required by the contract of tenancy, he may be awarded compensation representing the value to an incoming tenant of the adoption of that standard or system, but in order to be entitled to this compensation a record of the condition of the holding must have been made. Sect. 9.

The compensation due to the tenant may be diminished Sect. 1, sub-s. 2.

(a) by any benefit allowed to him by the landlord in consideration of his executing the improvement, (b) by an allowance for the value of the manure required by the tenancy or custom to be returned in respect of crops grown on and sold off or removed within the last two years of his tenancy, not exceeding the value of the manure which would in fact have been produced by the consumption on the holding of the crops so sold off or removed. No claim can be made by a tenant for compensation for any improvements, other than manuring, as defined in the Act, begun within a year before the expiration of his tenancy, or after the final notice to quit, unless the landlord, after notice served of the tenant's intention to begin the improvement, has assented or failed to object to the making of the improvement.

Sect. 8.

Sect. 5. Sect. 16, sub-s. 1.

An agreement may be concluded between the parties as to the compensation payable, or failing an agreement the matter will be settled by arbitration by a single arbitrator. The arbitration will extend to any claim for sums claimed to be due to the tenant from the landlord for any breach of contract or otherwise in respect of the holding and to any claim by the landlord against the tenant for waste committed or permitted by him or for any breach of contract or otherwise in respect of the holding and to any other question or difference of any kind between the landlord and the tenant arising out of the tenancy of the holding or as to the construction of the contract of tenancy, and no different method of arbitration is allowed. No specific notice of these claims is now required to be given, but any such claim will cease to be enforceable after the expiration of two months from the termination of the tenancy unless particulars thereof have been given by the landlord to the tenant or by the tenant to the landlord, as the case may be, before the expiration of that period.

Sect. 16, sub-s. 2.

Sect. 6.

Where an incoming tenant has, with the consent in writing of his landlord (or without such consent in the

case of a market garden), paid to an outgoing tenant any compensation payable in respect of an improvement, he will be entitled to claim compensation in respect of that improvement on quitting the holding in like manner as the outgoing tenant would have been entitled if he had remained tenant of the holding and quitted it at the time at which the incoming tenant quits it.

All questions which, under the Act, are referred to arbitration, must be determined, notwithstanding any agreement to the contrary, by a single arbitrator agreed upon by the parties, or in default of agreement to be selected by the Minister of Agriculture and Fisheries on the application in writing of either party from a panel of arbitrators appointed by the Lord Chief Justice of England. He must make and sign his award within twenty-eight days of his appointment, or within such longer period as the Minister of Agriculture and Fisheries may direct. The award is final and binding on the parties without any right to appeal, unless the arbitrator has misconducted himself, or the arbitration or award has been improperly procured, in which case the County Court may set the award aside; but the arbitrator may correct any clerical mistake or error arising from any accidental slip or omission. He is bound to state separately in his award the amount awarded in respect of the several claims referred to him. The arbitrator may at any stage of the proceedings, and shall, if so directed by the County Court, state a special case for the opinion of the County Court on any question of law arising in the course of the arbitration, and there is an appeal from the County Court to the Court of Appeal, whose decision is final. Any sum agreed or awarded to be paid for compensation, costs, or otherwise is recoverable upon order made by the County Court. The remuneration of an arbitrator nominated by the Minister will be such amount as is fixed by the Minister. When the arbitrator is appointed by the parties, his re-

Sect. 16, sub-s. 1. Sched. II. rr. 1, 5. Sched. II. r. 6. Sched. II. rr. 12, 14. Sched. II. r. 13. Rule 11. Rule 10. Sect. 16, sub-s. 4. Sect. 19.

Sched. II. r. 5. muneration in default of agreement will be fixed by the registrar of the County Court, subject to appeal to the judge of the Court.

Sect. 20. A charge upon the holding may be obtained by the landlord for any compensation paid by him, and if the landlord is a trustee or mortgagee he will not be liable personally for compensation, but it may be charged upon the holding by an order of the Minister of Agriculture and Fisheries, and the charge so made will be a "land charge" within the Land Charges Registration and Searches Act, 1888.

Sect. 20, sub-s. 7.

Sect. 50. Subject to the provisions of the Act as to "substituted compensation," any contract (whether under seal or not), whereby a tenant is deprived of his right to claim compensation under the Act, is void. The tenant may, however, if he choose, claim compensation under custom of agreement in lieu of compensation under the Act, though the landlord cannot compel him to do so.

Sect. 57, sub-s. 1. The compensation arising under the Act, whether for improvements, damage by game, or for disturbance, is payable by the "landlord" as defined by the Act, *i.e.*, "any person for the time being entitled to receive the rents and profits" of the land.

2. *Compensation for Damage by Game.*

Sect. 11. The Act gives the right to a tenant to obtain compensation for damage to his crops from game, which he has no right himself to kill and take; and for this purpose "game" is defined as meaning "deer, pheasants, partridges, grouse, and black-game." No claim, however, can be made unless the damage exceeds 1*s.* per acre of the area over which it extends, and notice must be given to the landlord as soon as may be after the damage is observed, and a reasonable opportunity afforded of inspecting the damage, in the case of a growing crop, before it is reaped, raised, or consumed; in the

case of a crop reaped or raised, before it is removed. Notice of the claim, with particulars, must also be given within one month after the expiration of the calendar year, or other agreed period. In default of agreement as to amount the compensation will be determined by arbitration. If the right to the game is vested in some other person than the landlord—for instance, in a shooting tenant—the landlord will be entitled to be indemnified by such person against all claims for compensation for damage by game.

3. *Compensation for Disturbance.*

The right of compensation for unreasonable disturbance was a new departure first introduced by the Act of 1906 and subsequently conferred on tenants by sect. 11 of the Act of 1908 in cases where a landlord, "without good and sufficient cause, and for reasons inconsistent with good estate management," terminated the tenancy by notice to quit, or in case of a tenancy for a fixed period, having been requested in writing, at least one year before the expiration of the tenancy, to grant a renewal, refused to do so. The right, which was considerably enlarged by the Agriculture Act, 1920, now depends on sect. 12 of the Act of 1923, which gives a tenant of a holding whose tenancy is terminated by reason of a notice to quit given after May 20, 1920, by the landlord the right to compensation for disturbance in any case except where the tenant (a) was not at the date of the notice cultivating according to the rules of good husbandry; (b) had at the date of the notice failed to comply with a notice to pay rent or to remedy any breach of any term or condition of the tenancy consistent with good husbandry; (c) had at the date of the notice prejudiced the interests of the landlord by committing a breach not capable of being remedied of any such term or condition; (d) had at the date of the notice become

Sect. 12.

bankrupt or compounded with his creditors; (e) had refused or failed to agree to a demand by the landlord for arbitration as to the rent of the holding; or (f) had at the date of the notice refused or failed to comply with a demand made to him by the landlord to execute at the landlord's expense an agreement setting out the terms of the tenancy. But in order to escape the liability for compensation for disturbance for any of these reasons the landlord's notice to quit must state that it was given for one or more of the reasons. The compensation is for loss or expense directly attributable to the quitting of the holding and unavoidably incurred by the tenant in connection with the sale or removal of his household goods, implements of husbandry, fixtures, farm produce or farm stock, to be computed for the purposes of the Act at an amount equal to one year's rent of the holding, unless it is proved that the loss and expense so incurred exceed one year's rent, in which case the sum recoverable will be the whole loss and expense so incurred up to a maximum amount equal to two years' rent of the holding. To entitle a tenant to recover this compensation in respect of any sale of goods, implements, produce, or stock he must have given the landlord a reasonable opportunity of making a valuation thereof and he must, one month before the termination of the tenancy, have given notice of intention to claim. It will not be payable where the tenant with whom the contract of tenancy was made has died within three months before the notice to quit. In one case only compensation for disturbance is payable when the notice to quit is given not by the landlord but by the tenant. That is where the landlord refuses or fails to agree to a demand in writing from the tenant for arbitration as to the rent to be paid for the holding and by reason of this refusal or failure the tenant terminates his tenancy by a notice to quit stated to be given for that reason. But even in this case compensation will not be payable if the circumstances are such that notice to

Sect. 12, sub-s. 3.

quit could have been given by the landlord for any of the reasons (a) (b) or (c) mentioned above.

Arbitration on the question of rent may therefore, under the Act, be demanded either by a landlord as against a tenant who refuses to agree to an increase of rent or by a tenant as against a landlord who refuses to agree to a reduction of rent. If the tenant refuses and he is in consequence served with notice to quit he will lose his right to compensation for disturbance. If the landlord refuses and the tenant in consequence gives notice to quit the landlord will, except in the circumstances before mentioned, be liable to pay compensation for disturbance, although the notice to quit comes from the tenant. But the provisions relating to demands for arbitration as to rent will not apply when the demand is for an increase or reduction to take effect before the expiration of two years from the commencement of the tenancy or from the date of a previous increase or reduction. Sect. 12, sub-s. 4.

The provisions as to compensation for disturbance are also applied with the necessary modifications to the occupation of cottages forming part of a holding and occupied by workmen employed in agriculture on the holding. Sect. 14.

Where a holding has become vested in more than one person in several parts, and the rent payable by the tenant has not been apportioned, the tenant may require any compensation payable to him under the Act to be determined as if the holding had not been divided, and the arbitrator is then to apportion the amount awarded between the persons who, for the purposes of the Act, together constitute the landlord. Sect. 18.

4. *Notice to Quit.*

The law before the Act of 1883 was that a half-year's notice to quit was sufficient to determine a yearly tenancy. By the Act of 1908, where a half-year's notice was "by law" necessary and sufficient, in all cases to

which the Act applied, a year's notice expiring with a year of tenancy was necessary and sufficient. But the landlord and tenant might exclude this provision by agreement. Under the Act of 1923, a notice to quit is (with certain exceptions) invalid if it purports to terminate the tenancy "before the expiration of twelve months from the end of the then current year of tenancy," and this provision cannot be contracted out of, but it does not extend to a case where a receiving order in bankruptcy is made against the tenant.

Sect. 25.

Sect. 27. A landlord may give notice to the tenant to quit part of his holding in order to resume the land for certain improvements specified in sect. 27 of the Act, such as the erection of labourers' cottages or other houses, the providing of allotments or small holdings, the planting of trees, &c.; but the tenant may treat such a partial notice as a notice to quit his entire holding. It is expressly provided that a notice in pursuance of a provision in the contract of tenancy authorising the resumption of possession of the holding or some part thereof for some specified purpose does not come under the requirement of a twelve months' notice to quit, unless that purpose is the use of the land for agriculture. A tenant receiving notice to quit part of his holding under such a resumption clause, will be entitled to a proportionate reduction of rent and to compensation for improvements and disturbance in respect of that part.

Sect. 25, sub-s. 2 (c).

Sect. 27, sub-s. 2.

Sect. 15. In the case of a tenancy not binding on the mortgagee of the land, it is enacted that the mortgagee must give the occupier six months' notice before he deprives him of the land, and if he so deprives him the occupier is entitled to compensation for his crops and for expenditure made by him in the expectation of holding his land for the full term of his contract of tenancy.

Sect. 23. Even in the case of a tenancy for a term of two years or upwards the tenancy will not terminate on the expiration of the term unless at least one year's notice of inten-

tion to terminate it has been given by either party. If not so terminated it will continue as a tenancy from year to year, but this provision does not apply to tenancies granted or agreed to be granted before 1st January, 1921.

In the case of tenancies which are liable to determination by the death or cesser of the estate of any landlord, instead of the tenant having a claim to emblements he will have the right to continue in occupation until the occupation is determined by a twelve months' notice to quit. This is in lieu of the right of occupation given by the Landlord and Tenant Act, 1851. Sect. 24.

On the making of any contract for sale of a holding or any part of a holding held by a tenant from year to year any current and unexpired notice to determine the tenancy will, if the contract for sale is made by the person by whom the notice to quit was given, be null and void unless the tenant has, prior to the contract, agreed in writing that the notice shall be valid. Sect. 26.

5. *Fixtures.*

Fixtures formerly became the property of the landlord on the determination of the tenancy. An exception was, however, introduced in the case of what are called "tenant's fixtures" and "trade fixtures." The latter, it was decided by the well-known case of *Elwes* v. *Maw* (2 Sm. L. C. 188), do not include fixtures put up for the purpose of agriculture. By 14 & 15 Vict. c. 25, s. 3, an agricultural tenant was enabled to remove fixtures put up by him with the consent of his landlord for agricultural purposes. Now all fixtures, whether erected by the tenant or acquired from a former tenant, and any buildings erected by him or acquired for which he is not under the Act or otherwise entitled to compensation, are the property of and removable by the tenant before or within a reasonable time after the determination of his Sect. 22.

tenancy. The landlord has, however, a right to one month's notice of removal, and may elect to purchase the fixtures or buildings.

It is to be observed that an absolute property in the fixtures and buildings (subject to the landlord's option of purchase) is thus vested in the tenant. The value of the fixtures may, if necessary, be ascertained by arbitration under the Act.

Sect. 48 (ii). The provisions of the Act with regard to fixtures and buildings extend to any fixture or building affixed or erected by a tenant for the purposes of his trade or business of a market gardener, and a tenant of a market garden may remove fruit trees and fruit bushes planted by him and not permanently set out.

6. *Distress.*

Sect. 34. Six years' arrears of rent could at the time of the passing of the Act of 1883 be levied by distress. In the case of arrears arising subsequently, a landlord may not distrain for rent which has become due more than one year before the making of the distress. In cases, however, where in the "ordinary course of dealing" payment of rent is habitually deferred until a quarter or half-year after the day when it becomes due, the rent is only deemed to become due at the expiration of such quarter or half-year. The amount of rent actually leviable by distress may, if payment is deferred habitually, exceed one year's rent, for the landlord may distrain for rent due but not yet payable according to the "ordinary course of dealing," and also for the rent which has become payable during the previous year according to "the ordinary course of dealing." (*Re Bew, Ex parte Bull*, 56 L. J. Q. B. 270; 18 Q. B. D. 642.)

Sect. 35. Live stock agisted at a fair price is exempted from distress, except to the extent of the price agreed to be paid for feeding. The exemption extends to machinery,

the *bona fide* property of a person other than the tenant, on his premises under an agreement for hire or use in the conduct of his business, and live stock belonging to such other person on the farm solely for breeding purposes. Disputes as to ownership or in respect of other matters relating to the distress may be heard by the County Court or a Court of Summary Jurisdiction, and where compensation for any improvement is due under the Act to the tenant and the amount has been ascertained, the landlord may not distrain for more than the balance of the rent. Sect. 36. Sect. 37.

7. *Other Matters.*

The landlord of a holding to which the Act applies may at all reasonable times enter on the holding to view the state of the holding, whether or not the right of entry is expressly given him by his tenancy agreement. Sect. 28.

Penal rents are abolished, and the landlord cannot recover by distress or otherwise any sum for breach of covenant beyond the actual damage suffered, except in cases of covenants or conditions against breaking up permanent pasture, grubbing underwoods, felling, cutting, lopping or injuring trees, or regulating the burning of heather, in which cases penal rents may be recovered and are enforceable as before. Sect. 29.

The tenant has full freedom of cropping arable land as he may choose, notwithstanding any agreement or custom as to the method of cropping, and he has full right to dispose of any produce of the holding, whether from arable or grass land. But the liberty given is not to apply in the last year of the tenancy or after notice to quit, so that in this respect the tenant may still be bound by contract or custom. Any tenant exercising his rights under this section of the Act must make suitable and adequate provision to protect the holding from injury or deterioration, which, in the case of produce sold off, must consist in the return to the holding of the full equiv- Sect. 30.

alent manurial value of the crops sold off. If he exercises his rights given him by the Act in such a manner as to injure or deteriorate the holding, or be likely so to do, the landlord will be entitled to recover damages for injury or deterioration, or obtain an injunction restraining the exercise by the tenant of his rights.

Sect. 10. The tenant is, moreover, made liable on the termination of his tenancy to pay compensation for any deterioration of the value of the holding caused by his failure to cultivate according to the "rules of good husbandry" or the terms of his contract of tenancy, but the landlord must give notice of his intention to claim such compensation before the termination of the tenancy. The "rules of good husbandry" are defined to include the maintenance of arable, meadow, and pasture land in a good state of cultivation and fertility and in good condition and the maintenance and clearing of ditches, drains, &c., and the maintenance and repair of hedges, fences, buildings, &c.

Sect. 57, sub-s. 1.

Sect. 31. The tenant is also forbidden after notice to terminate a tenancy is given to sell or remove from the holding any manure or compost or any hay, straw or roots, grown in the last year of the tenancy unless and until he has given the landlord or incoming tenant an opportunity of purchasing at their fair market value, or other value provided by the contract of tenancy such manure, compost, hay, straw or roots.

Sect. 32. Either party may, at any time during the tenancy, require a record of the condition of the buildings, fences, gates, roads, drains, ditches, and cultivation of the holding and a record of improvements executed by the tenant and of his fixtures and buildings to be made by a person to be appointed, in default of agreement, by the Minister of Agriculture and Fisheries, and the cost of making the record will be borne, in default of agreement, by the landlord and tenant in equal proportions.

THE

AGRICULTURAL HOLDINGS ACT, 1923

(13 & 14 Geo. 5, c. 9).

An Act to consolidate certain Enactments relating to Agricultural Holdings in England and Wales.

[7th June, 1923.]

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows:

Compensation for Improvements on Holdings.

§ 1. Right of tenant to compensation for improvements.

1.—(1)[1] Where a tenant of a holding has made thereon any improvement comprised in the First Schedule to this Act he shall, subject as in this Act mentioned, and, in a case where the contract of tenancy was made on or after the first day of January, nineteen hundred and twenty-one,[2] then whether the improvement was or was not an improvement which he was required to make by the terms of his tenancy, be entitled, at the termination of the tenancy,[3] on quitting his holding[4] to obtain from the landlord[5] as compensation for the improvement such sum as fairly represents the value of the improvement to an incoming tenant.[6]

(2) In the ascertainment of the amount of the compensation payable to a tenant under this section there shall be taken into account—

(*a*) any benefit which the landlord has given or allowed to the tenant in consideration of the tenant

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executing the improvement, whether expressly stated in the contract of tenancy to be so given or allowed or not;[7] and

(*b*) as respects manuring[8] as defined by this Act, the value of the manure required by the contract of tenancy or by custom to be returned to the holding in respect of any crops grown on and sold off or removed from the holding within the last two years of the tenancy or other less time for which the tenancy has endured, not exceeding the value of the manure which would have been produced by the consumption on the holding of the crops so sold off or removed.[9]

(3) Nothing in this section shall prejudice the right of a tenant to claim any compensation to which he may be entitled under custom, agreement, or otherwise, in lieu of any compensation provided by this section.[10]

(1) This sub-section took the place of sect. 1, sub-sect. 1, of the Agricultural Holdings Act, 1900, and is in almost identical terms therewith, except for the addition with regard to a contract of tenancy made on or after January 1st, 1921, which was added by the Agriculture Act, 1920, and except that a proviso that, in estimating the value of any improvement, there should not be taken into account as part of the improvement made by the tenant what is justly due to "the inherent capabilities of the soil," is omitted.

"Inherent capabilities of the soil."

The proviso as to the "inherent capabilities of the soil" had been the subject of considerable difference of opinion. It was in the Agricultural Holdings Act, 1883, but the Royal Commission on Agricultural Depression, in the final report of the majority, recommended its omission. Notwithstanding this recommendation, the proviso was retained in the Agricultural Holdings Act, 1900, but was omitted in sect. 1, sub-sect. 1, of the Act of 1908, which this sub-section reproduces.

The proviso was probably intended originally, perhaps unnecessarily, to guard against the tenant's compensation including anything properly referable to the landlord's property, and its omission, it is submitted, should not materially alter the assessment of compensation. The key to the principles on which

valuation of improvements should be based appears to be afforded by the concluding words of the sub-section. (See note (6), *post.*) § 1.

(2) The words referring to the case of a contract of tenancy made on or after January 1st, 1921, were added by the Agriculture Act, 1920, and are no doubt intended to get rid, in all cases of tenancies entered into after 1st January, 1921, of the decision in *Galloway* (*Earl*) v. *M'Clelland* ((1915) S. C. 1062), where it was held that a tenant is not entitled to compensation under the corresponding section in the Agricultural Holdings (Scotland) Act, 1908, for making an improvement comprised in Schedule I. of the Act if the improvement was one which he was bound under his lease to execute. This case was followed in *Huckell* v. *Sainty* (92 L. J. K. B. 313; (1923) 1 K. B. 150), where by a contract of tenancy made in 1906 for a term of fifteen years the tenant covenanted to plant fruit trees and bushes, but was held not to be entitled to compensation for the planting, which he was under an obligation to carry out.

Termination of a tenancy.

(3) "Termination of the tenancy" is interpreted in sect. 57 of this Act as meaning the cesser of a contract of tenancy by effluxion of time (as in the case of a lease for a term) or from any other cause (as by notice to quit, surrender, forfeiture, or re-entry for breach of covenant, &c.).

A tenancy from year to year is not determined by the death of the tenant, but vests in his personal representatives: *Doe* d. *Shaw* v. *Porter* (3 T. R. 13); *James* v. *Dean* (11 Ves. 383, 393).

A tenancy from year to year, implied under an agreement for a lease or a void lease, determined at law at the end of the term without notice: *Doe* d. *Tilt* v. *Stratton* (4 Bing. 446; 6 L. J. (O. S.) C. P. 50); but under sect. 25, *post*, p. 81, a year's notice to quit now appears to be necessary.

Disclaimer.

If a trustee in bankruptcy disclaims a lease vested in the bankrupt, "the disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the bankrupt and his property in or in respect of the property disclaimed": Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 54, sub-s. 2.

The effect of the disclaimer, when executed, is that neither the lessor nor the trustee can claim the benefit of any provisions contained in the lease which were to come into operation at the expiration or sooner determination of the term (*Ex parte Sir W. Hart Dyke, In re Morrish* (52 L. J. Ch. 570; 22 Ch. D. 410)), and the trustee who disclaims cannot claim compensation

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under the Act: *Schofield* v. *Hincks* (58 L. J. Q. B. 147; 60 L. T. 573).

Forfeiture.

A lease may be determined by a proviso for forfeiture on breach of covenant, or on the happening of some event, such as the bankruptcy of the lessee; but it is to be remembered that the Conveyancing Act, 1881, s. 14, makes it necessary in most cases to serve a notice requiring the lessee to remedy the breach complained of, and to make compensation for the breach before the right of re-entry can be enforced. That section does not extend to a covenant or condition against assigning, underletting, or parting with the possession of the land leased, or (in the case of a lease of agricultural or pastoral land) to a condition for forfeiture on the bankruptcy of the lessee or on the taking in execution of his interest. (See Conveyancing Act, 1892, s. 1, sub-ss. 2 and 3.)

In the case of a lease containing a proviso for re-entry on breach of covenant (but not making the lease *ipso facto* void on that event), the commencement of an action by the lessor to recover possession of the property for breach of covenant will, without actual entry, operate to determine the lease: *Serjeant* v. *Nash, Field & Co.* (72 L. J. K. B. 630; (1903) 2 K. B. 304); *Moore* v. *Ullcoats Mining Co.* (77 L. J. Ch. 282; (1908) 1 Ch. 575).

Where there was a lease for twenty-one years, with a proviso that the lease might be determined by the lessee at the end of seven or fourteen years, and it was agreed that the landlord should pay the tenant compensation for seeds, gooseberry and currant bushes, &c., "at the end of the term," the Court held that the tenant was entitled to compensation, although he determined it at the end of fourteen years: *Bevan* v. *Chambers* (14 Times L. R. 417).

Repudiation of the landlord's title.

A tenancy may also be determined by the lessee's repudiation of the landlord's title. In *Vivian* v. *Moat* (50 L. J. Ch. 331; 16 Ch. D. 730), the defendants disputed the plaintiffs' alleged right to raise their rent, but were willing and offered to pay what was due in respect of a customary rent-charge. It was held that this was a repudiation of the relation of landlord and tenant, and that the plaintiffs were entitled to eject without proving a valid notice to quit.

Surrender.

A surrender is another mode of determining a tenancy. Every surrender by act of the parties must be in writing, and if the term be for more than three years, it must be by deed: Real Property Amendment Act, 1845 (8 & 9 Vict. c. 106), s. 3.

A surrender may also take place by act and operation of law,

as by the acceptance of a new lease by the tenant, or by a mutual agreement between landlord and tenant, followed by the granting of a new lease to a stranger with the assent of the lessee. See Dixon, p. 496.

In *Whittaker* v. *Barker* (1 C. & M. 113), a tenant under an agreement for a lease for fourteen years was to receive compensation on quitting his farm, according to a valuation to be then made, for the tillages and improvements he might leave on the farm. On account of some dispute the tenant said he would quit at the end of the year, and the landlord said he might. He did so. The Court held that such a quitting was not a quitting under the terms of the tenancy, but in reality a running away, and the landlord was entitled to possession without making any compensation for tillages and improvements. In a Scottish case of *Todd* v. *Bowie* (4 Fraser, 435), it was held that where a tenant who, under a lease for nineteen years, left at the end of the third year in consequence of the landlord's failure to put the fences into repair, there was not a "determination of the tenancy" within the definition in sect. 42 of the Agricultural Holdings (Scotland) Act, 1883, which corresponds with that in sect. 57 of this Act.

At what time the tenant is entitled to compensation.

(4) The tenant "must quit his holding" in order to become entitled to obtain compensation for improvements. The "sitting tenant," as he is called, whose rent is raised is not so entitled, though in such a case it is in the tenant's power either to give up his holding, receiving the compensation to which he is entitled, or to elect to continue at the new rent. A tenant who remains in his holding, and submits to a change of the terms under which he holds, will not thereby lose his right to compensation on finally quitting the holding in respect of improvements made by him during the earlier tenancy. See sect. 7.

The question may arise, where the tenant has lawfully sublet a cottage on the holding to a sub-tenant whom he is unable to eject owing to the provisions of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (10 & 11 Geo. 5, c. 17), as to whether he can in such a case, for the purpose of obtaining compensation under the Act, be said to have quitted the holding. The recent case of *Reynolds* v. *Bannerman* (91 L. J. K. B. 651; (1922) 1 K. B. 719) would seem to support a contention that his right to obtain compensation would not fail in such circumstances.

In cases where, by the custom of the country or the terms of the letting, the tenant is not bound to deliver up possession of the whole of his holding at the same time, but retains part tem-

§ 1. porarily, the result of the authorities seems to be that the tenancy will be taken to have determined in respect of each part of the holding when the tenant actually gives up possession. He will therefore be entitled to compensation for any improvement effected "on quitting" that parcel of the whole holding upon which the improvement was executed: see *Black* v. *Clay* ((1894) A. C. 368); *Morley* v. *Carter* (66 L. J. Q. B. 843; (1898) 1 Q. B. 8); *Re Paul, Ex parte Portarlington (Earl)* (59 L. J. Q. B. 30; 24 Q. B. D. 247); *Swinburne* v. *Andrews* (92 L. J. K. B. 889; (1923) 2 K. B. 483). Where a tenant holds over wrongfully after the expiration of his tenancy he will not, for the purpose of a notice of his claim, be held to have quitted his holding when he is ultimately ejected: *Cave* v. *Page* (67 Sol. J. 659).

Case where the landlord is himself a leaseholder.

(5) Where the landlord is himself a leaseholder, it would seem that he cannot, on the expiration of his lease, recover from his own superior landlord compensation in respect of money paid under the Act to the tenant who has been in actual occupation, for the intermediate landlord can scarcely be said to have "made" the improvement.

Value of the improvement.

(6) The concluding words of this sub-section are important as showing the basis on which compensation is to be assessed. It is to be ascertained by estimating "the value of the improvement" to an incoming tenant, not by the cost incurred in effecting it, with a proportionate deduction for each year while the tenancy lasts, which was the method of valuation under the Agricultural Holdings Act, 1875. The "value to an incoming tenant" may differ very much from the value arrived at by the ascertainment of the cost incurred, for though the latter may have been great, the present value may be very small, or *vice versâ*.

Proper method of valuation.

It is submitted that the proper way of valuing any improvement is not by taking the cost to the tenant who makes it, but by ascertaining (a) the capital sum, or (b) the extra rent which it would reasonably be worth the while of an incoming tenant to pay beyond the fair rental of the land without the improvement in consideration of having the benefit of the improvement as it stands on the determination of the previous tenancy. The sum payable by the landlord for the improvement will be either (a), or (b) capitalized at so many years' purchase as will accord with the probable duration of the value of the improvement, subject in either case to any deductions necessary under sub-sect. 2. In order to avoid giving the tenant anything which is properly due to the landlord's interest in the soil, the unimproved value must

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not be taken at the rental value to a tenant without the improvement which might in some cases be nil, but its value, assuming the possibility of the improvement by the expenditure of the money required for that purpose, to a tenant able and willing to make the expenditure. This is adopted as the proper basis of valuation by the Report of a Committee appointed by delegates from fifteen Tenant-right Valuers' Associations in 1908, which contains the following passage as to the omission of the proviso relating to "inherent capabilities": "Some words referring to these which were in sect. 1 of the 1900 Act are omitted in sect. 1 of the 1906 Act; but valuers will agree that compensation for an improvement made by a tenant should not be enhanced by the inherent capabilities of the soil. The practice in the future should therefore be the same as in the past." In a Scottish case, *Brown* v. *Mitchell* ((1910) Sess. Cas. 369), it was held that the word "value" used in a lease in connection with feeding stuffs meant the original manurial value of the feeding stuffs, *i.e.*, the value of the manurial constituents of the feeding stuffs before they were consumed. The terms of the lease allowed compensation for a proportion only of such value after consumption on the holding, and this provision was held valid as between landlord and tenant.

(7) This sub-section provides for cases, amongst others, where the landlord may, in consideration of the execution of an improvement by the tenant, have allowed him to hold his farm at a rent below its full value. The words, "whether expressly stated in the contract of tenancy to be so given or allowed or not," were inserted by the Agriculture Act, 1920, no doubt to meet the Scottish case of *M'Quater* v. *Fergusson* ((1911) S. C. 640), where a tenant, who was bound by his lease to apply a certain amount of purchased artificial manure to the land, claimed on quitting compensation for the unexhausted value of artificial manure so applied and the landlord disputed the claim on the ground that the tenant had received a "benefit" in the sense of sect. 1, sub-sect. 2 (a), namely, the benefit of having to pay less rent than he would otherwise have had to pay. It was held that such an implied benefit was not a "benefit" in the sense of the section.

On the other hand, in *Galloway* (*Earl*) v. *M'Clelland* ((1915) S. C. 1062), it was held that temporary pasture handed over to a tenant free of charge on his entry, though not specially mentioned in the lease, might be taken into account as a benefit under this sub-section to be set against compensation payable to the tenant in respect of temporary pasture laid down by him.

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"Manuring."

(8) "Manuring" is defined by sect. 57 as referring to the improvements numbered 25, 26 and 27 in Part III. of the First Schedule and includes both chemical and animal manures.

(9) It is presumed that "the value of the manure required, &c." is not to be taken into account in reduction unless such value has not in fact been returned to the holding, though this is not expressly so stated. In any case, the amount taken into account is not to exceed the actual value of the manure which would have been produced by consumption on the holding of the crops sold or removed; so that where a lease or tenancy agreement provides, as is sometimes the case, for the return of manure in excess of the manurial value of the crops sold off, with a view of penalizing and so preventing any sale or removal, such excess will not be taken into account under this section.

If the lease or tenancy agreement or the custom of the country simply prohibits the sale or removal of hay or straw without providing for a return of manure, and the tenant sells or removes in breach of his agreement, as he may do under sect. 30, sub-sect. 1, this sub-section is inapplicable; but under the proviso in sect. 30, sub-sect. 1, the tenant is, in that case, bound to make suitable and adequate provision to protect the holding from injury or deterioration, consisting in the return to the holding of the full equivalent manurial value of the crops sold off or removed, and in default of his doing so the landlord may recover damages in respect of the injury or deterioration: see *post*, p. 88.

Claim may be made under custom, &c.

(10) This sub-section repeats sect. 1, sub-sect. 5, of the Agricultural Holdings Act, 1900, which effected a very important alteration as to the right to compensation. By sect. 57 of the Agricultural Holdings Act, 1883, a claim under the custom of the country was excluded in respect of any improvement to which the Act applied, and there was no option to the tenant of claiming except under the Act, although the custom might have been more advantageous to him. He might, however, have claimed under an agreement altogether outside the Act: *Newby* v. *Eckersley* (68 L. J. Q. B. 261; (1899) 1 Q. B. 465); *Re Pearson and l'Anson* (68 L. J. Q. B. 878; (1899) 2 Q. B. 618). Now the tenant can claim (a) under the Act; (b) under the custom of the country; (c) under agreement; or (d) otherwise. These various methods of obtaining compensation are, no doubt, mutually exclusive as to any particular improvement, but may be made use of side by side as regards different improvements. See *Re Smith and Duke of Devonshire* (22 T. L. R. 619).

For the law as to customs of the country, see Dixon, pp. 587

et seq., and for a statement of the customs prevailing in different counties, see pp. 710 *et seq.* As a rule, the custom of the country does not provide compensation for "improvements" except in respect of purchased or artificial manures applied in growing a root or other fallow crop.

Consent of landlord as to improvement in 1st Sched. Part I.

2.[1] Compensation under this Act shall not be payable in respect of any improvement comprised in Part I. of the First Schedule to this Act, unless the landlord[2] of the holding has, previously to the execution of the improvement,[3] consented in writing to the making of the improvement, and any such consent may be given by the landlord unconditionally, or upon such terms as to compensation or otherwise, as may be agreed upon between the landlord and the tenant, and, if any such agreement is made, any compensation[4] payable under the agreement shall be substituted for compensation under this Act.

(1) This section reproduces, with a few verbal alterations, sect. 3 of the Agricultural Holdings Act, 1883.

(2) The words "or his agent duly authorized in that behalf," which were contained in the Act of 1883, after the word "landlord," are here omitted, but the omission does not appear to be material, as the consent of a duly authorized agent to an act within the scope of his authority would in any case bind his principal. Probably an agent having the general management of an estate would be held to have an implied authority to consent to improvements on behalf of the landlord. See *Re Pearson and l'Anson* (68 L. J. Q. B. 878; (1899) 2 Q. B. 618), where it was held that it was within the scope of an agent entrusted with the management of an estate to consent to the alteration of a farm to a market garden, so as to give the tenant the right to a market garden valuation. On the other hand, in *Turner* v. *Hutchinson* (2 F. & F. 185) it was held that a farm bailiff accustomed to let farms upon the ordinary terms and receive the rents, &c., had no authority to let upon unusual terms unknown to the owner.

Authority to agent to consent.

(3) It is to be noticed that the consent must be given before the improvement is executed. A subsequent consent will not enable the tenant to claim compensation in respect of an improvement made after the commencement of the Act. The consent may be general and given by the terms of the lease under which

When the consent must be given.

§§ 2, 3.

the tenant holds. In *Mears* v. *Callender* (70 L. J. Ch. 621; (1901) 2 Ch. 388) the lease permitted the tenant at his own cost to "convert into orchard so much of the meadow land surrounding the house as he may think proper." It was held that this power was a consent in writing by the landlord to the planting of fruit trees, which gave the tenant the right to compensation at the end of his tenancy for trees so planted. In *Re Morse and Dixon* ((1917), 87 L. J. K. B. 1) a clause in a lease providing that if the tenant should plant any part of the land with fruit trees, bushes or plants and should desire at the expiration of the tenancy to remove them he should be allowed before a certain date to do so, but with an option to the landlord of purchasing, was held not to be a consent in writing by the landlord to the planting as an improvement so as to bring the case within this section and enable the tenant to obtain compensation under the Act.

Where a tenant has a claim for planting fruit bushes with the consent of the landlord and the land is sold, as between vendor and purchaser, the tenant's claim for compensation must be borne by the purchaser. The purchaser having notice of the tenancy must be taken as knowing that there is a liability for compensation. Such a liability is not in the nature of an incumbrance which should be disclosed by the vendor: *Re Derby (Earl) & Ferguson's Contract* (81 L. J. Ch. 567; (1912) 1 Ch. 479).

Adequacy of compensation.

(4) Nothing is said in this section as to the adequacy of the compensation under any agreement to exclude a claim for compensation under the Act. It differs in this respect from sect. 4, which says that in the case of improvements in the third part of the First Schedule the compensation agreed upon must be "fair and reasonable" to oust the operation of the Act. It is presumed that, in analogy to the rule which precludes it from weighing the adequacy of the consideration for a contract, the Court would not enter into the adequacy of the compensation under this section, and that any compensation not being so small as to be illusory would be sufficient. A landlord cannot impose as a condition of his consent to the terms that no compensation shall be paid: per Cozens-Hardy, J., in *Mears* v. *Callender* (70 L. J. Ch. 624; (1901) 2 Ch. 388).

See Forms 1, 2, 3 for consent and agreements.

Notice to landlord as to

3.—(1) Compensation under this Act shall not be payable in respect of any improvement comprised in

§ 3. improvement in 1st Sched. Part II.

Part II. of the First Schedule to this Act[1] unless the tenant of the holding has, not more than three nor less than two months[2] before beginning to execute the improvement, given to the landlord notice in writing of his intention so to do, and of the manner[3] in which he proposes to do the intended work, and, upon such notice being given, the landlord and the tenant may agree on the terms as to compensation[4] or otherwise on which the improvement is to be executed.

(2) If any such agreement is made, any compensation payable under the agreement shall be substituted for compensation under this Act.

(3) In default of any such agreement the landlord may, unless the notice of the tenant is previously withdrawn,[5] execute the improvement in any reasonable and proper manner[6] which he thinks fit, and recover from the tenant as rent a sum not exceeding five per cent. per annum on the outlay incurred, or not exceeding such annual sum payable for a period of twenty-five years as will repay that outlay in that period, with interest at the rate of three per cent. per annum.[7]

Provided that, if the landlord fails to execute the improvement within a reasonable time,[8] the tenant may execute the improvement, and shall in respect thereof be entitled to compensation under this Act.

The Minister may by regulation substitute such percentages or period as he thinks fit for the percentages and period mentioned in this sub-section, having due regard to the current rates of interest.[9]

(4) The landlord and the tenant may, by the contract of tenancy or otherwise, agree to dispense with any notice under this section, and any such agreement may provide for anything for which an agreement after notice under this section may provide, and in such case shall be of the same validity and effect as such last-mentioned agreement.[10]

§ 3.

(1) This section took the place of sect. 4 of the Agricultural Holdings (England) Act, 1883, and deals with improvements under the second part of the First Schedule, which includes only drainage.

Meaning of "month."

(2) "Month" in an Act of Parliament means calendar month; see Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3.

The "manner" of executing the proposed work.

(3) "The manner" would include such particulars as the size of pipes, depth, direction, &c. of proposed drainage works.

See Form 4.

(4) See note (4) to sect. 2.

Tenant may withdraw his notice.

(5) It is to be noticed that the tenant may, before the landlord executes the improvements, withdraw his notice, so as to take away from the landlord the power of executing the improvement and charging the tenant with interest on any outlay incurred by him in the work.

Sect. 4 of the Act of 1883 contained here the words "undertake to execute the improvement himself and may," so that before the landlord proceeded to execute the work there had to be a preliminary undertaking to do so. The landlord may now, under the present section, on receiving notice from the tenant, at once proceed to execute the work required, unless the notice of the tenant is previously withdrawn.

(6) The landlord is not, by the words of the section, bound to execute the drainage works in the manner proposed by the tenant, but must do so in a "reasonable and proper manner."

(7) The percentages and period mentioned in this sub-section may be altered by regulation of the Minister under the concluding paragraph of this sub-section. See regulation in this behalf in Appendix III.

Capital money under the Settled Land Act, 1882.

Money may be obtained by landowners for drainage in various ways. Capital money under the Settled Land Act, 1882, may, under sect. 25 of that Act, on a certificate of the Ministry of Agriculture and Fisheries, or of a competent engineer, or an order of the Court, be applied in drainage. A tenant for life of settled land is thus enabled to sell a portion of his estate for the purpose of executing drainage works on other portions.

Under sect. 21 of this Act, capital money arising under the Settled Land Acts, 1882 to 1890, may be applied in payment of any moneys expended and costs incurred by a landlord in or about the execution of any improvement mentioned in the first or second parts of the Schedule hereto.

Facilities given by

Under the Land Drainage Act, 1845 (8 & 9 Vict. c. 56), tenants for life are empowered to apply to the Court of Chancery for leave

§ 3.

to make permanent improvements by draining; and if in the opinion of the Court such improvements would be beneficial to all persons interested, the money expended in making such improvements may be charged on the inheritance of the land with interest at a rate not exceeding 5 per cent. per annum, payable half-yearly; the principal is to be repaid in equal annual instalments, not less than twelve nor more than eighteen in number.

the legislature for the raising of money for drainage.

Under certain Acts, called the Public Money Drainage Acts, 1846 to 1856 (9 & 10 Vict. c. 101; 10 & 11 Vict. c. 11; 11 & 12 Vict. c. 119; 13 & 14 Vict. c. 31; 19 & 20 Vict. c. 9), any owner of land (including a tenant for life) may obtain advances from the public funds for works of drainage to be executed upon a certificate of the Inclosure Commissioners (now the Ministry of Agriculture and Fisheries). The works must be executed within five years, and the amount is to be repaid by means of a rent-charge of 6*l*. 10*s*. for twenty-two years for every 100*l*. advanced.

Under the Improvement of Land Act, 1864 (27 & 28 Vict. c. 114), "improvements of land" include drainage, and provision is made facilitating the borrowing of money by landowners from land improvement companies and others for such improvements. The rate of interest to be charged is not to exceed 5*l*. per cent. per annum, repayment is by instalments, and the term for repayment is, under the Improvement of Land Act, 1899 (62 & 63 Vict. c. 46), such period not exceeding forty years as the Ministry of Agriculture and Fisheries, having regard in each case to the character and probable duration of the improvement, determine. See also the Agricultural Credits Act, 1923 (13 & 14 Geo. 5, c. 34).

What would be a "reasonable" time for the execution of the improvement.

(8) What would be a "reasonable time" within which the landlord should execute the improvement must be determined according to the circumstances in each particular case in which the question arises. As drainage works are generally executed in the winter or early spring, it is suggested that the improvement should be executed not later than the winter or spring next following the notice.

(9) See Regulation of the Minister of Agriculture and Fisheries in this behalf in Appendix III.

(10) An agreement to dispense with notice under this section need not be in writing: *Hamilton Ogilvy* v. *Elliot* (7 Fraser, 1115). In *Barbour* v. *M'Douall* ((1914) S. C. 844) it was held that an agreement to dispense with the notice required could not be inferred upon the facts there proved. See Forms 5 and 6.

§ 4. Agreements as to improvement in 1st Sched., Part III.

4.[1] Where any agreement in writing entered into before the first day of January, nineteen hundred and twenty-one, secures to the tenant of a holding for any improvement comprised in Part III. of the First Schedule to this Act, fair and reasonable[2] compensation, having regard to the circumstances existing at the time of making the agreement, the compensation so secured shall as respects that improvement be substituted for compensation under this Act.

(1) This section reproduces the material part of sect. 5 of the Agricultural Holdings (England) Act, 1883, omitting the parts of the section referring to tenancies current at the commencement of that Act. The word "particular" before "agreement in writing," the meaning of which was uncertain, is, however, omitted. The improvements comprised in Part III. of the First Schedule are mainly improvements which tend to increase the fertility of the soil by the application of manures, &c., but where sect. 48 of this Act applies the improvements comprised in the Third Schedule, viz. planting of fruit trees, fruit bushes, strawberry plants, &c., are to be treated as comprised in Part III. of the First Schedule.

Except as to any agreement entered into before January 1st, 1921, this section as from that date no longer applies, but in respect of the improvements of a market garden nature to which the provisions of sect. 48 of this Act apply, there is a similar provision for allowing compensation to be substituted by agreement. See sect. 49, sub-sect. 6, *post*. As from January 1st, 1921, no agreement for "substituted compensation" in respect of the improvements mentioned in Part III. of the First Schedule to the Act is good. Unless therefore the parties without resorting to arbitration agree as to amount, the compensation must be assessed by an arbitrator in every case.

"Fair and reasonable" compensation.

(2) The words "fair and reasonable" distinguish the compensation, which excludes the operation of the Act, in this section from that mentioned in sects. 2 and 3 (see note (4) to sect. 2). In the case of dispute as to the adequacy of an agreement under this section, the question must, it would seem, be decided by arbitration under sects. 5 and 16. In the Scottish case of *Bell* v. *Graham* ((1908) Sess. Cas. 1060) the majority of the Court of Session held that where an agreement has been made for sub-

stituted compensation an arbitrator to whom the question of compensation claimed by the tenant has been referred is bound to decide whether the scale of compensation was at the date of the making of the agreement "fair and reasonable." The Court considered, however, that his decision on this question might be challenged in a process of interdict or of reduction (which would correspond to prohibition in an English Court). The Lord President in the course of his judgment said, "If parties of full age sign an agreement the presumption of fact is very strong that it is fair and reasonable." This presumption is no doubt equally strong in English Law and may properly be acted upon by an arbitrator.

Determination of claims to compensation for improvements.

5. If the tenant of a holding claims to be entitled to compensation, whether under this Act, or under custom or agreement, or otherwise, in respect of any improvement comprised in the First Schedule to this Act, and if the landlord and tenant fail to agree as to the amount and time and mode of payment of the compensation, the difference shall be settled by arbitration.[1]

(1) See the provisions as to arbitration in sects. 16, 17 and 18, *post*, and the rules for arbitrations in the Second Schedule. A claim for compensation under the Act must be settled by agreement or referred to arbitration. It cannot be the subject of a counter-claim in an action: *Gas Light & Coke Co.* v. *Holloway* (52 L. T. 434); *Schofield* v. *Hincks* (58 L. J. Q. B. 147). Nothing is "due" under the Act until it has been ascertained by agreement or arbitration: *Cheshire C. C.* v. *Hopley* (21 L. G. R. 524).

Right of tenant who has paid compensation to outgoing tenant

6. Where an incoming tenant of a holding has, with the consent in writing of his landlord,[1] paid to an outgoing tenant any compensation payable under or in pursuance of this Act in respect of the whole or part of any improvement, the incoming tenant shall be entitled on quitting the holding to claim compensation in respect of the improvement or part in like manner, if at all, as the outgoing tenant would have been entitled if he had remained tenant of the holding, and quitted it at the time at which the incoming tenant quits it.

§§ 6, 7, 8.

(1) It is to be noticed that the consent in writing of the landlord is necessary to enable an incoming tenant to avail himself of this section. As compensation is in practice very generally paid in this way by the incoming to the outgoing tenant, the former should, in order to preserve his rights, be careful to get the written consent of the landlord before making any payment.

See Form 38.

In respect of any improvement upon land agreed to be let or treated as a market garden, the consent of the landlord to the purchase by the incoming tenant is not necessary. See sect. 48, sub-sect. 1 (i) (*c*).

Provision as to change of tenancy.

7. A tenant who has remained in his holding during two or more tenancies shall not, on quitting his holding, be deprived of his right to claim compensation under this Act in respect of improvements by reason only that the improvements were not made during the tenancy on the determination of which he quits the holding.[1]

(1) This section supplements sect. 1, sub-sect. 1, so that a tenant will on quitting his holding be entitled to compensation for improvements made at any time during his occupation, notwithstanding any re-letting or change of the tenancy or the terms under which he holds. It will cover the case of a sale of the land held by the tenant during the currency of his tenancy. His right in such a case will continue against the purchaser, and may be made whenever he quits the holding.

Restriction in respect of improvements by tenant about to quit.

8.—(1) A tenant of a holding shall not be entitled to compensation under this Act in respect of any improvements, other than manuring[1] as defined by this Act, begun by him,—

(*a*) in the case of a tenant from year to year, within one year before he quits the holding, or at any time after he has given or received notice to quit which results in his quitting the holding; and

(*b*) in any other case, within one year before the expiration of his contract of tenancy:

Provided that this section shall not apply in the case of any improvement— §§ 8, 9.

(i) Where the tenant, previously to beginning the improvement, has served notice on his landlord of his intention to begin it, and the landlord has either assented or has failed for a month after the receipt of the notice to object to the making of the improvement; or

(ii) In the case of a tenant from year to year, where the tenant has begun the improvement during the last year of his tenancy, and, in pursuance of a notice to quit thereafter given by the landlord,[2] quits his holding at the expiration of that year.

(1) "Manuring" means any of the improvements numbered 25, 26 and 27 in Part II. of the First Schedule to the Act. See sect. 57.

(2) Notice to quit might formerly have been given within the last year of a tenancy from year to year, if the operation of sect. 22 of the Act of 1908, which made a year's notice necessary in the absence of agreement to the contrary, had been excluded by express agreement between the landlord and tenant. Now under sect. 25, with certain exceptions, a notice to quit must be at least a twelve months' notice notwithstanding any agreement to the contrary. (*Post*, p. 81.)

Compensation in respect of Increased or Diminished Value of Holding.

Compensation for continuous adoption of special standard or system of farming.

9.—(1) Where a tenant on quitting a holding proves to the satisfaction of an arbitrator appointed under this Act that the value of the holding to an incoming tenant has been increased during the tenancy by the continuous adoption of a standard of farming or a system of farming which has been more beneficial to the holding than the standard or system (if any) required by the contract of tenancy, the arbitrator shall award to the tenant such compensation as in his opinion represents the value to an

§ 9. incoming tenant of the adoption of that standard or system:[1]

Provided that—

(*a*) this section shall not apply in any case unless a record of the condition of the holding has been made under this Act or any enactment repealed by this Act, or in respect of any matter arising before the date of the record so made; and

(*b*) compensation shall not be payable under this section unless the tenant has, before the termination of the tenancy, given notice in writing to the landlord of his intention to claim such compensation; and

(*c*) the arbitrator in assessing the value to an incoming tenant shall make due allowance for any compensation agreed or awarded to be paid to the tenant for any improvement specified in the First Schedule to this Act which has caused or contributed to the benefit.

(2) Nothing in this section shall entitle a tenant to recover in respect of an improvement specified in the First Schedule or the Third Schedule to this Act any compensation which he would not have been entitled to recover if this section had not been passed.

(3) The continuous adoption of such a beneficial standard or system of farming as aforesaid shall be treated as an improvement for the purposes of the provisions of this Act relating to the determination of the rent properly payable in respect of a holding.

(1) This section adds to the list of improvements for which a tenant may claim compensation, another item, namely, the continuous adoption of a special standard or system of farming more beneficial to the holding than the standard or system required by the contract of tenancy. In order to obtain this compensation the tenant must show that a record of the condition of the holding has been made under sect. 27 of the Agri-

cultural Holdings Act, 1908, or under sect. 32 of this Act, and he can only claim for the improvement in the holding as from the date of such record. It must also be shown that the value of the holding has been increased to an incoming tenant, so as to exclude cases where some special scientific system has been adopted which could not be carried out by an ordinary tenant without special scientific training. Notice must be given in writing of intention to claim before the termination of the tenancy. The operation of this section may, to some extent, be avoided by a stipulation in the contract of tenancy for the highest possible standard of farming. See Form 22.

Compensation to landlord for deterioration of holding.

10. Where a landlord proves, to the satisfaction of an arbitrator appointed under this Act, on the termination of the tenancy of a holding, that the value of the holding has been deteriorated during the tenancy by the failure of the tenant to cultivate the holding according to the rules of good husbandry or the terms of the contract of tenancy, the arbitrator shall award to the landlord such compensation as in his opinion represents the deterioration of the holding due to such failure:[1]

Provided that—

(*a*) compensation shall not be payable under this section unless the landlord has, before termination of the tenancy, given notice in writing to the tenant of his intention to claim such compensation:[2] and

(*b*) nothing in this section shall prevent a landlord from claiming compensation for dilapidations or for the deterioration of the holding under the contract of tenancy.[2]

(1) This section supplements sect. 30 of this Act, which gives the landlord the right to claim compensation for deterioration caused by the tenant taking advantage of the liberty of cropping and sale of produce contrary to the terms of his contract of tenancy. Under this section the landlord may claim compensation for any deterioration of the holding caused by failure to cultivate according to the "rules of good husbandry" or the terms of the contract of tenancy. In most cases the section is

§§ 10,11.

unnecessary, as any well-drawn contract of tenancy would provide for the tenant's liability for injury or deterioration of the holding.

(2) In this case, differing from other claims by the landlord referred to in sect. 16, sub-sect. 1, notice in writing of claim must be given to the tenant before the termination of the tenancy. But it has been held in *Arden* v. *Rutter* (92 L. J. K. B. 894; (1923) 2 K. B. 865) that where the landlord is entitled to compensation for deterioration through neglect of the tenant to observe the terms of the contract of tenancy, he is not bound to give such notice, as his claim is made not under the Act, but under the contract of tenancy, and is therefore covered by proviso (*b*). That proviso is apparently contradictory to proviso (*a*), but the Court held that the statute should be construed, as far as possible, so as not to deprive any person of his existing rights under contract or common law.

Compensation for Damage by Game.

Compensation for damage by game.

11.—(1)[1] Where a tenant of a holding has sustained damage to his crops from game, the right to kill and take which is vested neither in him nor in anyone claiming under him other than the landlord,[2] and which the tenant has not permission in writing to kill,[3] he shall, subject as hereinafter mentioned, be entitled to compensation from his landlord for such damage if it exceeds in amount the sum of one shilling per acre of the area over which the damage extends.

(2) The amount of compensation payable under this section shall, in default of agreement made after the damage has been suffered, be determined by arbitration, but no compensation shall be recoverable under this section unless notice in writing is given to the landlord as soon as may be after the damage was first observed by the tenant and a reasonable opportunity is given to the landlord to inspect the damage—

(*a*) in the case of damage to a growing crop, before the crop is begun to be reaped, raised, or consumed; and

(*b*) in the case of damage to a crop reaped or raised, before the crop is begun to be removed from the land—

and unless notice in writing of the claim, together with the particulars thereof, is given to the landlord within one month after the expiration of the calendar year, or such other period of twelve months as by agreement between the landlord and tenant may be substituted therefor, in respect of which the claim is made.[4]

(3) Where the landlord proves that, under a contract of tenancy made before the first day of January, nineteen hundred and nine, any compensation for damage by game is payable by him, or that in fixing the rent to be paid under such contract allowance in respect of such damage to an agreed amount was expressly made, the arbitrator shall make such deduction from the compensation which would otherwise be payable under this section as may appear just.[5]

(4) Where the right to kill and take the game is vested in some person other than the landlord, the landlord shall be entitled to be indemnified by such other person against all claims for compensation under this section.[6]

(5) For the purposes of this section the expression "game" means deer, pheasants, partridges, grouse, and black-game.[7]

(1) This section reproduces sect. 2 of the Agricultural Holdings Act, 1906, and sect. 10 of the Agricultural Holdings Act, 1908.

(2) "Other than the landlord." These words are no doubt inserted to prevent the tenant losing his right by such a device as the non-reservation of game, and then a letting of the sporting rights by the tenant to the landlord, so that the landlord would claim "under" the tenant, and not in his own right.

The landlord is liable under the section not only for damage caused by game from his own coverts, but also when the damage is caused by game from a neighbouring estate. In *Thomson* v. *Galloway* (*Earl*) ((1919), 56 Sc. L. R. 448) under the corresponding section of the Scottish Act a landlord was held liable for

§ 11. damage to his tenant's crops by winged game which came over from a neighbouring proprietor's land during the close season when nobody would have had a right to kill them.

(3) By common law, the tenant has the exclusive right to game on the land occupied by him, unless it is expressly reserved to the landlord (Dixon, p. 190); therefore this section can only operate in the case of land where the right of sporting is by the contract of tenancy expressly and exclusively reserved. Its operation, even when sporting rights have been reserved, can be avoided by a subsequent permission in writing to kill game given to the tenant.

Conditions of right to compensation.

(4) In order that a tenant who has sustained damage by game may have a right to compensation from the landlord the following conditions must have been complied with:—(i) The right to kill game must not be vested in him, or in anyone claiming under him other than the landlord; (ii) the damage must exceed 1*s.* per acre of the area over which it extends; (iii) notice in writing must be given to the landlord as soon as may be after the damage is first observed; (iv) reasonable opportunity must be given to the landlord to inspect the damage, if to a growing crop, before it is reaped, raised, or consumed; if to a crop reaped or raised, before it is begun to be removed from the land; (v) notice in writing of the claim, with particulars, must be given within one month after the expiration of the current calendar year, or other period of twelve months, to be agreed upon by the landlord and tenant.

Two notices, therefore, are necessary: one as soon as may be after the damage is first observed, drawing attention to it; the other making the claim, with particulars, to be given within one month after the expiration of the calendar year, or other period of twelve months agreed upon. If any of the above requirements are not fulfilled it would seem that the claim must fail.

The period of one month after the expiration of the calendar year will not always be a convenient time for either party for the sending in of the notice of claim for damage by game, as, in the case of autumn-sown crops, it may at that early period be impossible to estimate accurately the damage caused. Three different dates have been suggested as convenient to be substituted for the end of the calendar year, viz.:—

(a) The date on which the tenancy would end in any year;

(b) February 1st, as being the end of the shooting season;

(c) October 1st, as the date by which harvest is generally completed. See Forms 31, 32, 33.

(5) This sub-section can only take effect in cases where, before 1st January, 1909 (the date of the commencement of the Agricultural Holdings Act, 1908), it has been agreed that the landlord should make compensation for damage by game, or there has been an *express* allowance in fixing the rent in respect of such damage. No tacit or unexpressed allowance will suffice, even though it is clear that the possibility of damage by game was one of the factors taken into consideration between the landlord and tenant in fixing the rent.

No arrangement entered into after January 1st, 1909, between landlord and tenant as to allowing any sum off the rent for damage by game will be effectual to prevent a claim under the Act. Theoretically, all land should be let at its full rental value without making any deduction for damage by game, otherwise the tenant may receive compensation twice over—first, under the contract of tenancy in the rent; secondly, by a claim under the Act.

Liability where right of shooting let.

(6) The Act makes the landlord liable to the tenant for damage by game not only when he has retained the right of shooting in his own hands, but also when he has let it to a shooting tenant. This clause gives the landlord who has let the shooting to a shooting tenant the right to recover by way of indemnity from that tenant the damage he may himself have had to pay for injury by game to the crops of his farming tenant.

It is advisable, when a landlord intends to claim this right of indemnity, that, in order that the amount payable may not be disputed by the shooting tenant, he should give notice to the latter as soon as he has himself received notice of damage from his farm tenant. The shooting tenant will then be able to satisfy himself by inspection as to damage done.

A shooting tenant may contract himself out of his liability under this sub-section.

Where the damage is caused not by game reared by the landlord but by game from the coverts of a neighbouring landowner which adjoin the agricultural land injured, no right of indemnity is given by the Act, but there would seem, on the principles laid down in *Farrer* v. *Nelson* (54 L. J. Q. B. 385; 15 Q. B. D. 258), to be a common law right of indemnity in favour of the landlord who has had to pay for damage to his tenant's crops against the neighbouring landowner who has reared the game which caused the damage.

(7) In the Game Act, 1831 (1 & 2 Will. 4, c. 32), "game" is defined by sect. 2 as including "hares, pheasants, partridges,

§§ 11, 12. grouse, heath or moor game, black-game and bustards." Hares are not included in the definition in this Act because the tenant has an inalienable right to kill ground game under the Ground Game Act, 1880.

Compensation for Disturbance.

Compensation for disturbance.

12.—(1) Where the tenancy of a holding terminates by reason of a notice to quit given by the landlord,[1] and in consequence of such notice the tenant quits the holding, then, unless the tenant—

(*a*) was not at the date of the notice cultivating the holding according to the rules of good husbandry;[2] or

(*b*) had, at the date of the notice, failed to comply within a reasonable time with any notice in writing by the landlord served on him requiring him to pay any rent due in respect of the holding or to remedy any breach being a breach which was capable of being remedied of any term or condition of the tenancy consistent with good husbandry;[3] or

(*c*) had, at the date of the notice, materially prejudiced the interests of the landlord by committing a breach which was not capable of being remedied of any term or condition of the tenancy consistent with good husbandry;[3] or

(*d*) was at the date of the notice a person who had become bankrupt or compounded with his creditors; or

(*e*) has, on or after the first day of January, nineteen hundred and twenty-one, refused, or within a reasonable time failed, to agree to a demand made to him in writing by the landlord for arbitration under this Act as to the rent to be paid for the holding as from the next ensuing date at which the tenancy could have been termi-

nated by notice to quit given by the landlord at the date of the said demand;[4] or

(*f*) had, at the date of the notice, unreasonably refused, or within a reasonable time failed, to comply with a demand made to him in writing by the landlord requiring him to execute at the expense of the landlord an agreement setting out the existing terms of the tenancy;

and, unless the notice to quit states that it is given for one or more of the reasons aforesaid,[5] compensation for the disturbance shall be payable by the landlord[6] to the tenant in accordance with the provisions of this section:

Provided that—

(i) compensation shall not be payable under this section in any case where the landlord has made to the tenant an offer in writing to withdraw the notice to quit and the tenant has unreasonably refused or failed to accept the offer;[7] and

(ii) this section shall not apply where notice to quit was given on or before the twentieth day of May, nineteen hundred and twenty; and

(iii) where notice to quit was given after that date but before the first day of January, nineteen hundred and twenty-one, this section shall apply whether or not the notice stated the reason or reasons for which it was given.[8]

(2) The landlord of a holding may at any time apply to the agricultural committee for the area in which the holding is situate for a certificate that the tenant is not cultivating the holding according to the rules of good husbandry, and, on any such application being made, the committee, after giving to the landlord and the tenant or their respective representatives an opportunity of being heard, shall, as they think proper, either grant or

§ 12. refuse the certificate within one month after the date of the application.[9]

The landlord or tenant may, within seven days after the notification to him of the refusal or grant by the committee of a certificate, require the question as to whether the holding is being cultivated according to the rules of good husbandry to be referred to an arbitrator who may grant a certificate for the purpose of this sub-section or revoke the certificate granted by the committee, and the award of the arbitrator shall be given within twenty-eight days of the date on which the matter is referred to him.

Subject to any such appeal, a certificate granted under this sub-section shall be conclusive evidence that the holding is not being cultivated according to the rules of good husbandry.[2]

In the case of a holding situate in a county borough for which an agricultural committee has not been appointed, this sub-section shall have effect with the substitution of the Minister for an agricultural committee.

(3) Where the landlord of a holding refuses, or within a reasonable time fails to agree to, a demand made to him in writing by the tenant for arbitration under this Act as to the rent to be paid for the holding as from the next ensuing date at which the tenancy could have been terminated by notice to quit given by the tenant at the date of the said demand, and by reason of the refusal or failure the tenant exercises his power of terminating the tenancy by a notice stating that it is given for that reason, the tenant shall be entitled to compensation in the same manner as if the tenancy had been terminated by notice to quit given by the landlord:

Provided that such compensation shall not be payable if the circumstances are such that a notice to quit could have been given by the landlord for any of the reasons mentioned in paragraphs (*a*), (*b*), or (*c*) of sub-section (1) of this section.[10]

§ 12.

(4) The provisions of this section relating to demands for arbitration as to the rent to be paid for a holding shall not apply where the demand, if made later than six months after the thirty-first day of December, nineteen hundred and twenty, is so made that the increase or reduction of the rent would take effect at some time before the expiration of two years from the commencement of the tenancy of the holding or from the date on which a previous increase or reduction of the rent took effect.[11]

(5) (*a*) Where a demand in writing for an arbitration as to the rent to be paid for the holding has been made for the purposes of this section and has been agreed to, whether in writing or otherwise, the question as to the rent shall be referred to arbitration.

(*b*) An arbitrator, in determining for the purposes of this section what rent is properly payable in respect of a holding, shall not take into account any increase in the rental value which is due to improvements which have been executed thereon so far as they were executed wholly or partly by and at the expense of the tenant without any equivalent allowance or benefit made or given by the landlord in consideration of their execution and have not been executed by him under an obligation imposed by the terms of his contract of tenancy, or fix the rent at a higher amount than would have been properly payable if those improvements had not been so executed, and shall not fix the rent at a lower amount by reason of any dilapidation or deterioration of land or buildings made or permitted by the tenant.

(6) The compensation payable under this section shall be a sum representing such loss or expense directly attributable to the quitting of the holding as the tenant may unavoidably incur upon or in connection with the sale or removal of his household goods, implements of husbandry, fixtures, farm produce or farm stock on or used in connection with the holding, and shall include any expenses reasonably incurred by him in the prepara-

§ 12. tion of his claim for compensation (not being costs of an arbitration to determine the amount of the compensation), but for the avoidance of disputes, such sum shall, for the purposes of this Act, be computed at an amount equal to one year's rent of the holding, unless it is proved that the loss and expenses so incurred exceed an amount equal to one year's rent of the holding, in which case the sum recoverable shall be such as represents the whole loss and expenses so incurred up to a maximum amount equal to two years' rent of the holding.[12]

(7) Compensation shall not be payable under this section—

(*a*) in respect of the sale of any goods, implements, fixtures, produce or stock unless the tenant has before the sale given the landlord a reasonable opportunity of making a valuation thereof;[13] or

(*b*) unless the tenant has, not less than one month before the termination of the tenancy, given notice in writing to the landlord of his intention to make a claim for compensation under this section;[14] or

(*c*) where the tenant with whom the contract of tenancy was made has died within three months before the date of the notice to quit; or

(*d*) if in a case in which the tenant under section twenty-seven of this Act accepts a notice to quit part of his holding as a notice to quit the entire holding, the part of the holding affected by the notice given by the landlord, together with any other part of the holding affected by any previous notice given under that section by the landlord to the tenant, is less than one-fourth part of the original holding, or the holding as proposed to be diminished is reasonably capable of being cultivated as a separate holding, except compensation in respect of the

part of the holding to which the notice to quit related;[15] or

(*e*) where the holding was let to the tenant by a corporation carrying on a railway, dock, canal, water, or other undertaking, or by a government department or a local authority, and possession of the holding is required by the corporation, department, or authority for the purpose (not being the use of the land for agriculture[16]) for which it was acquired by the corporation, department, or authority, or appropriated under any statutory provision; or

(*f*) in the case of a permanent pasture which the landlord has been in the habit of letting annually for seasonal grazing, and which has, since the fourth day of August, nineteen hundred and fourteen, and before the first day of January, nineteen hundred and twenty-one, been let to a tenant for a definite and limited period for cultivation as arable land, on the condition that the tenant shall, along with the last or waygoing crop, sow permanent grass seeds; or

(*g*) where a written contract of tenancy has been entered into (whether before or after the commencement of this Act) for the letting by the landlord to the tenant of a holding, which at the time of the creation of the tenancy had then been for a period of not less than twelve months in the occupation of the landlord, upon the express terms that if the landlord desires to resume that occupation before the expiration of a specified term not exceeding seven years the landlord should be entitled to give notice to quit without becoming liable to pay to the tenant any compensation for disturbance, and the landlord desires to resume occupation within the

§ 12.

specified period, and such notice to quit has been given accordingly.[17]

(8) In any case where a tenant holds two or more holdings, whether from the same landlord or different landlords, and receives notice to quit one or more but not all of the holdings, the compensation for disturbance in respect of the holding or holdings shall be reduced by such amount as is shown to the satisfaction of the arbitrator to represent the reduction (if any) of the loss attributable to the notice to quit by reason of the continuance in possession by the tenant of the other holding or holdings.[18]

(9) The landlord shall, on an application made in writing after the thirty-first day of December, nineteen hundred and twenty, by the tenant of a holding to whom a notice to quit has been given which does not state the reasons for which it is given, furnish to the tenant within twenty-eight days after the receipt of the application a statement in writing of the reasons for the giving of the notice, and if he fails unreasonably so to do, compensation shall be payable under this section as if the notice to quit had not been given for a reason specified in sub-section (1) of this section.

(10) The expression "holding" in this section shall not include any land which forms part of any park, garden, or pleasure ground attached to and usually occupied with the mansion house, or any land adjoining the mansion house which is required for its protection or amenity, and the compensation for disturbance payable in respect of a notice to quit given in respect of any such land shall be such compensation (if any) as is payable under the provisions of this Act in that behalf.[19]

(11) Compensation payable under this section shall be in addition to any compensation to which the tenant may be entitled in respect of improvements.

(1) This important section, which deals with the tenant's right to compensation for disturbance and provides for arbitration as

to the rent of agricultural holdings, was by the Agriculture Act, 1920, substituted for sect. 11 of the Act of 1908 (which is now repeated in sect. 13 of this Act), and it is no longer necessary, as under that section it was necessary, in order that a tenant may obtain compensation for disturbance to show that the tenancy was terminated by a notice to quit given without "good and sufficient cause, and for reasons inconsistent with good estate management," and cases such as *Brown* v. *Mitchell* ((1910) S. C. 369) and *Re Bonnett and Fowler* (82 L. J. K. B. 713; (1913) 2 K. B. 537) on the effect of these words are no longer of importance. This section applies in the case of any notice to quit given after May 20th, 1920 (see proviso (ii)). Where notice was given before May 20th, 1920, the right to compensation is governed by sect. 11 of the Agricultural Holdings Act, 1908. As to the effect of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 38, in preserving the rights of a tenant under the repealed Act of 1908, see *Hamilton Gell* v. *White* (91 L. J. K. B. 873; (1922) 2 K. B. 422). A tenant who is ejected after a notice to quit comes within the section: *Mills* v. *Rose* ((1923) W. N. 330).

(2) The "rules of good husbandry" are defined in sect. 57 (*post*, p. 122). Whether or not the holding is being cultivated according to the rules of good husbandry must be a question of fact in each case, but if the certificate of an agricultural committee for the district is obtained by the landlord under subsect. 2 this will be conclusive evidence on the point and will avoid the question being disputed.

(3) It is not every breach of a term or condition of the tenancy which will deprive a tenant of his right to compensation for disturbance if the landlord gives notice to quit in consequence. The terms or conditions broken must be consistent with good husbandry and (a) notice must have been served on the tenant to remedy the breach and not complied with within a reasonable time (*e.g.*, neglect to repair fences or clean out ditches or to destroy noxious weeds), or (b) the breach must materially prejudice the landlord's interests and must be not capable of being remedied (*e.g.*, the ploughing up of grass land which could not be restored for many years, or the felling of trees).

(4) Clause (e) coupled with sub-sect. 3 makes it necessary that any demand for an increase or reduction of rent where not mutually agreed upon shall be referred to arbitration, except in the cases excepted by sub-sect. 4. The alteration of rent

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demanded to come within these clauses must date from the next ensuing date at which the tenancy could have been terminated by notice to quit given at the date of the demand, so that it cannot in any case come into operation until after twelve months from the demand. The penalties for refusing to submit the question to arbitration are, in the case of a refusing tenant, that if the tenancy is in consequence terminated by the landlord he will lose his right to compensation for disturbance, and in the case of a refusing landlord that if the tenancy is in consequence terminated by notice to quit from the tenant he will be liable to pay compensation for disturbance which in other cases is only payable when the notice to quit comes from the landlord. See Forms 9, 10.

(5) In order to avoid liability to compensation for disturbance for any of the reasons (a), (b), (c), (d), (e) or (f), it is not only necessary to be prepared to prove the existence of the reason but also that the reason was stated in the notice to quit. See Form 14. If not so stated the landlord will be unable to set up the reason in answer to the tenant's claim for compensation for disturbance, except in the case of notice given before January 1st, 1921.—See proviso (ii).

Who is the landlord.

(6) The landlord, *i.e.*, the person entitled to receive the rents and profits of the land on the determination of the tenancy (see definition of landlord in sect. 57), and not the landlord who gave the notice to quit, if that is a different person, will be liable to pay the compensation: *Bradshaw* v. *Bird* (90 L. J. K. B. 221; (1920) 3 K. B. 144). This definition of "landlord" would, it seems, include the person equitably entitled to the rents and profits, *e.g.*, a purchaser under a contract of sale after the date fixed for completion of the purchase: *Dale* v. *Hatfield Chase Corporation* (92 L. J. K. B. 237; (1922) 2 K. B. 282). A notice of intention to claim given to the person who is the landlord at the time when it is given will enure for the benefit of the tenant against a purchaser who subsequently becomes the landlord. *Ibid.*

Withdrawal of notice to quit.

(7) Payment of compensation for disturbance may be avoided if the landlord offers in writing to withdraw his notice to quit and the tenant unreasonaby refuses to accept the offer. It is not stated if the offer to withdraw by the landlord must be unconditional, but in *Re Perrett and Bennett Stanford's Arbitration* (91 L. J. K. B. 930; (1922) 2 K. B. 592), it was held that an offer to allow the tenant to remain in occupation at a substantially

increased rent is not the withdrawal of a previously given notice to quit within the meaning of the proviso. In that case, Sterndale, M.R., expressly refrained from deciding whether an offer to withdraw to come within the proviso must be entirely unconditional, but that would seem to have been the opinion of Scrutton and Younger, L.JJ.

(8) Sub-sect. 9 provides that where a notice to quit has been given by a landlord which does not state the reasons for which it was given, the tenant may request the landlord to state the reasons, and if the landlord fails unreasonably to do so, compensation will be payable as if the notice to quit had not been given for a reason specified in sub-sect. 1. This enabled a tenant to whom notice to quit was given between May 20th, 1920, and January 1st, 1921, to ascertain the landlord's reason for the notice to quit and to dispute it, if it purported to be a reason which would deprive the tenant of compensation under this subsection.

(9) Any landlord who proposes to serve notice to quit on a tenant on account of non-cultivation of his holding according to the rules of good husbandry will be well advised to apply under sub-sect. 2 to his county agricultural committee for a certificate to that effect, as such a certificate will be "conclusive evidence" of the fact. The certificate need not necessarily be obtained before the notice to quit is given but must relate to the condition of the holding at that time, which is the crucial date under sub-sect. 1 (a). If there is an appeal from the finding of the agricultural committee to an arbitrator, the award must be given within twenty-eight days of the date of the reference to him without apparently any power of obtaining an extension of time as in other cases of arbitration under this Act. See Form 17.

(10) As mentioned above in note (4) this sub-section enables a tenant, who demands a reduction of rent, which the landlord refuses, to require the landlord to refer the question to arbitration. If he refuses the tenant's request he will be liable to pay compensation for disturbance if the tenant by reason of the refusal terminates the tenancy by notice to quit.

(11) Demands for increase or reduction of rent which are made with the view of taking effect before the expiration of two years from the commencement of the tenancy or from a previous increase or reduction of rent do not come within the provisions of sub-sect. 1 (e) and sub-sect. 3 as to arbitration. Consequently a landlord making such a demand for an increase and giving

§ 12. notice to quit on the tenant's refusal to agree will not escape compensation for disturbance, and a tenant making such a demand for a reduction and giving notice to quit on the landlord's refusal to agree will not be entitled to compensation for disturbance on quitting.

Amount of compensation.

(12) The compensation payable for disturbance is a sum representing the loss or expense incurred by the tenant in respect of the sale or removal of his household goods, implements of husbandry, &c., but "for the avoidance of disputes" it is to be computed as equal to one year's rent of the holding, unless it is proved that such loss or expenses exceeds one year's rent, in which case the whole loss or expenses incurred up to a maximum amount equal to two years' rent of the holding will be recoverable. In *Re Evans and Glamorganshire County Council* (10 L. G. R. 805; 76 J. P. 468) the loss or expenses "unavoidably incurred" in connection with the sale of a tenant's stock under the legislation then in force was held to include loss sustained by selling the stock by public auction on going out, as against its sale if sold under ordinary circumstances, and the cost of supplying refreshments to those attending the auction, if found to be customary, but not the fee paid by the tenant for valuing his stock before sale. The latter fee would, it is submitted, be included in "expenses reasonably incurred by him in the preparation of his claim for compensation" under this sub-section. In *Barbour* v. *M'Douall* ((1914) S. C. 844) it was held that the compensation would include not merely the expense of the sale of stock but loss through deterioration of the stock upon a sale.

The question arises whether in a case where it is proved that no loss or expense directly attributable to quitting the holding has in fact been incurred by the tenant there will be a right to recover one year's rent of the holding as compensation for disturbance. Such a case might occur where land is let without house or buildings to a tenant for grazing purposes only or to a tenant who has sub-let the land and does not cultivate it himself. This question has not so far come before the Court of Appeal, but it is understood that County Court judges have not been agreed on this point. It is submitted with some diffidence that there can be no right to compensation for loss or expense which has not been incurred at all, the round figure of one year's rent only applying where there has been *some* loss or expense.

(13) The tenant must have given the landlord before sale of any goods, implements, &c., in respect of which he claims, an

opportunity of valuation though this would seem unnecessary when the tenant claims the one year's rent and no more. The tenant is not bound on his own initiative to make the landlord an offer of an opportunity of making a valuation if the landlord has in fact been given such an opportunity: see *Barbour* v. *M'Douall* ((1914) S. C. 844). It is a question of fact, depending on the circumstances of each case, whether the tenant has given the landlord a reasonable opportunity of making the valuation: *Dale* v. *Hatfield Chase Corporation* (92 L. J. K. B. 237; (1922) 2 K. B. 282).

Notice of claim.

([14]) The notice of intention to claim compensation must be given not less than one month before the termination of the tenancy and not within two months of the notice to quit or refusal to grant a renewal of the tenancy as under sect. 11 of the Act of 1908. See Form 34. The sub-section requires the notice of intention to be of a claim "under this section." A notice given under the Act of 1908, previously to the passing of the Agriculture Act, 1920, has been held insufficient to support a claim under sect. 10 of the Act of 1920, which is now replaced by this section: see *Hamilton Gell* v. *White* (91 L. J. K. B. 875; (1922) 2 K. B. 422).

([15]) Under sect. 27 of this Act, if notice to quit part of the holding is given with a view to the use of the land for any of the purposes therein mentioned, the tenant may within twenty-eight days after service of the notice to quit serve on the landlord a notice that he accepts it as a notice to quit the entire holding to take effect on the expiration of the then current year of tenancy. This sub-section provides that in such a case the outgoing tenant shall not have the right to compensation for disturbance in respect of the entire holding if (a) the part of the holding affected by the landlord's notice to quit, together with any other part already resumed under a previous notice under sect. 27 is less than one fourth part of the original holding, or (b) the holding as proposed to be diminished is reasonably capable of being cultivated as a separate holding. The tenant will, however, be entitled to compensation for disturbance in respect of the part of the holding to which the landlord's notice to quit relates, to be measured presumably at the amount of the proportionate rent of such part for one year.

([16]) The words "not being the use of the land for agriculture" appear to show that compensation for disturbance, though not payable in other cases by a local authority, will be payable where

§ 12. the authority gives notice to terminate a tenancy of land let by them for the purpose of reletting it in small holdings, which is an agricultural purpose. If the land was not originally let to the tenant, who is dispossessed, by the local authority, but by some other owner from whom they have acquired the land, they will be liable in the same way as any other landlord to pay compensation for disturbance in consequence of a notice to quit for any purpose. The Small Holdings Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 34), which gave compensation for disturbance in certain cases to tenants whose land is taken for small holdings was repealed by the Agriculture Act, 1920.

([17]) In order to bring a holding within exception (g) the holding must have been in the occupation of the landlord for at least twelve months and then let by a contract in writing expressly reserving to the landlord the right to resume possession before the expiration of a specified term not exceeding seven years by notice to quit without becoming liable to pay compensation for disturbance, and the notice to quit must be served for the purpose of resuming occupation by the landlord. The exception is intended to meet cases where land is let temporarily by a landlord (which includes any person for the time entitled to receive the rents and profits) who has previously occupied the land and desires to resume occupation again at a future date, *e.g.*, a case where a father has farmed his own land and dies and his son who has succeeded to the property will not be in a position to take the farm into his own hands for some years, but wishes to do so eventually.

([18]) A tenant occupying two or more holdings is not likely to suffer the same loss by being dispossessed of one of his holdings as a tenant who receives notice to quit the only holding occupied by him. The sub-section is restricted to cases where the other holding or holdings are occupied by the tenant as tenant of some landlord, and the case of a person farming land of his own and working another farm as tenant is not, though it might very well have been, included in this sub-section.

([19]) It is not easy to see the reason for inserting sub-sect. 10, as the word "holding" as defined in sect. 57 of the Act would not include a garden or pleasure ground or in most cases a park unless it was let as part of a farm, though it might include land adjoining a mansion house "which is required for its protection or amenity" if let to a farmer. In cases included in this sub-section, sect. 13 (which is a reproduction of sect. 11 of the Agricultural Holdings Act, 1908) will apply, and a tenant will

be entitled to compensation if his tenancy is terminated "without good and sufficient cause, and for reasons inconsistent with good estate management." If a farm letting includes both land excluded by this sub-section from the general provisions of the section and land not so excluded, different considerations will have to be applied by the arbitrator in adjudicating on the tenant's claim for compensation for disturbance and the sums (if any) payable will have to be assessed separately. The word "park" in this sub-section is doubtless not used in its strict legal meaning of ground inclosed and privileged for wild beasts of chase (*e.g.*, deer) by the King's grant or prescription but in its popular sense as in the Agricultural Rates Act, 1896, the Settled Land Act, 1890, and the Small Holdings and Allotments Act, 1908, s. 41. See *Pease* v. *Courtney* (73 L. J. Ch. 760; (1904) 1 Ch. 503). It is defined in Murray's English Dictionary as "a large ornamental piece of ground usually comprising woodland and pasture, attached to or surrounding a country house or mansion, and used for recreation, and often for keeping deer, cattle, or sheep."

Compensation for disturbance in cases to which s. 12 does not apply.

13.[1]—(1) This section applies only to land (being or forming part of a holding) which is not included in the definition of "holding" for the purposes of section twelve of this Act.

(2) Where the landlord of land to which this section applies, without good and sufficient cause, and for reasons inconsistent with good estate management terminates the tenancy by notice to quit,[2] the tenant upon quitting the land shall, in addition to the compensation (if any) to which he may be entitled in respect of improvements, be entitled to compensation for the loss or expense directly attributable to his quitting the land which the tenant may unavoidably incur upon or in connection with the sale or removal of his household goods or his implements of husbandry, produce, or farm stock, on or used in connection with the land:[3]

Provided that no compensation under this section shall be payable—

(*a*) unless the tenant has given to the landlord a reasonable opportunity of making a valuation of such

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goods, implements, produce, and stock as aforesaid;

(*b*) unless the tenant has, within two months after he has received notice to quit, given to the landlord notice in writing of his intention to claim compensation under this section;[4]

(*c*) where the tenant with whom a contract of tenancy was made has died within three months before the date of the notice to quit;

(*d*) if the claim for compensation is not made within three months after the time at which the tenant quits the land.[5]

(1) This section reproduces, with some omissions, sect. 11 of the Agricultural Holdings Act, 1908, which was repealed by the Agriculture Act, 1920, and its place taken by sect. 10 of that Act, now appearing as sect. 12 of the present Act, which must be referred to on the question of compensation for disturbance in the case of any tenancy terminating after the commencement of the Act of 1920 (January 1st, 1921) by reason of a notice to quit given after May 20th, 1920 (see *ante*, p. 40), except as to the land excluded by sect. 12, sub-sect. 10, viz., "any land which forms part of any park, garden, or pleasure ground attached to and usually occupied with the mansion house, or any land adjoining the mansion house which is acquired for its protection or amenity." It is difficult to understand why "garden or pleasure ground" are mentioned as they would not come within the definition of "holding" in sect. 57, though a garden may in some cases be a subject for compensation under sect. 14 (*post*, p. 57).

(2) It is to be noticed that, to give a right to compensation, the termination of the tenancy by notice to quit must be "without good and sufficient cause," and also "for reasons inconsistent," &c., the conjunction "and," not "or," being used. If it is established to the satisfaction of the arbitrator to whom the matter may be referred that the termination is not inconsistent with good estate management, which is, of course, a question of fact for his decision, but which, it is submitted, would include the more economical or profitable carrying on of the estate, as by sub-division into smaller holdings or the amalgamation of farms (when such a course may seem desirable), the getting rid of an unskilful or

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impecunious tenant who is deteriorating the land in his occupation, the development of building, the planting of woodland, and the taking of land into the landlord's hands for the purpose of improvement, then no claim for compensation can properly arise, although the termination of the tenancy may press hardly on the individual tenant who is dispossessed. A notice to quit given by a landlord with a view to a sale of the land for which purpose it may be desirable that a purchaser should have actual possession of the land would, it seems, not be given "without good and sufficient cause."

The Scottish case of *Brown* v. *Mitchell* ((1910) Sess. Cas. 369) contains some valuable remarks by the Lord President (Lord Dunedin) on the onus on the parties in a claim for compensation for disturbance, and on the different grounds for terminating a tenancy which an arbitrator should consider "good and sufficient cause." He says in the course of his judgment, "Expressed in common language, what this clause was meant to do was, not to give fixity of tenure (which would have been a perfectly different thing), but to give compensation for what may be characterised as capricious disturbance on the part of the landlord in capriciously putting an end to the lease. Now what reasons are capricious and what reasons are not capricious no man would try to define, because really no one could possibly *ab ante* figure all the possible reasons for which a landlord might wish to get rid of a tenant. But . . . there may be perfectly good reasons for getting rid of a tenant which are not, in the strict sense of the word, agricultural reasons, and a landlord who got rid of a tenant for one of these reasons, being a good one, is not liable under this clause." He then instances the tenant being a bad farmer or the rent being too low as perfectly good reasons. The observations of Lord Dunedin were approved in *Re Bonnett and Fowler* (82 L. J. K. B. 713; (1913) 2 K. B. 537), where it was held that a notice to quit given by a landlord to the tenant of an agricultural holding in order that a higher rent may be obtained is "a good and sufficient cause" and is not a reason "inconsistent with good estate management" within the meaning of paragraph (*a*) of this section, so that in case of the termination of the tenancy for such a reason the tenant is not entitled to compensation under this section. Vaughan Williams, L.J., said that the onus was on the tenant to prove that the landlord was without good and sufficient cause and for reasons inconsistent with good estate management terminating the tenancy but that the onus was liable to shift. The

§ 13. Court doubted whether notwithstanding rule 3 (1) of Order XL. of the County Court (Agricultural Holdings) Rules, 1909, it had power to draw inferences of fact from the facts and documents stated in that case.

Limitation of claims.

(3) The compensation is strictly limited to loss or expense *directly* attributable to quitting the holding, and *unavoidably* incurred in connection with the sale or removal of household goods, implements, produce or work. It will include the ordinary expenses of removal to another farm, or compensation for realisation of stock by forced sale by auction when removal is not reasonably possible. See *Re Evans and Glamorgan County Council* (10 L. G. R. 805; 76 J. P. 468).

In *Barbour* v. *M'Douall* ((1914) S. C. 844) it was observed that where there was a sale the compensation would include not merely the expense of the sale but also the loss through deterioration of the stock.

Notice required.

(4) Notice of intention to claim compensation for disturbance under this section must be given within two months after the tenant has received notice to quit. The notice of intention by itself is not sufficient, but a claim must also be made under clause (*d*) within three months after quitting the holding.

Notice of claim.

(5) The actual claim for compensation, as distinguished from the notice of intention to claim under clause (*b*), must be given within three months after the time at which the tenant quits the holding. It may be wholly verbal: *Sylvester* v. *Brown* (85 L. J. K. B. 1173).

In *Cave* v. *Page* (67 S. J. 659), where a tenancy was determined by notice to quit duly served on the tenant to quit on March 25th, 1920, and the tenant did not quit the holding on that date but held over until he was removed in January, 1921, under an order of the Court in ejectment proceedings, it was held that from March 25th, 1920, he was not holding under a contract of tenancy, and the land he was occupying unlawfully was not a "holding" within the Act, and consequently that the time when he was ejected was not the time he quitted the holding within the meaning of sect. 11 of the Agricultural Holdings Act, 1908. Therefore a claim for compensation made by him under that section in December, 1920, was not made within three months of the time at which he quitted the holding and he was not entitled to compensation under that section.

§ 14. Application of preceding section to cottages on holdings.

14.—(1) Where the occupation of a dwelling-house (including a garden attached thereto) forming part of a holding has been allowed by the tenant of the holding to a workman employed by him in agriculture on the holding, whether the occupation is under a contract of tenancy or not, and the occupation is terminated on account of the termination by the tenant of the holding of the employment of the workman, the provisions of sections twelve and thirteen of this Act shall (subject as hereinafter provided and so far as the same are capable of application) apply as if the dwelling-house (including a garden attached thereto) were a holding and, where there is no contract of tenancy, as if the person allowing the dwelling-house to be so occupied were the landlord and the workman were the tenant, and the notice to terminate the occupation were a notice to quit:[1]

Provided that—

(*a*) compensation shall not be payable under this section if—

(i) the notice to terminate the occupation is given before the expiration of six weeks from the commencement of the occupation; or

(ii) the tenant of the holding has, before giving the notice, obtained from a court of summary jurisdiction for the district in which the dwelling-house is situate a certificate that the termination of the occupation is necessary or expedient to enable the holding to be worked properly or to better advantage;[2] or

(iii) the employment of the workman is for a year or half-year, and the occupation is terminated at the end of such period; or

(iv) the workman does not cease to occupy the dwelling-house on the expiration of the notice to terminate his occupation thereof or on the expiration of a period of two months

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from the date when the notice was given whichever is the later; or

(v) the notice is given by reason of the employment of the workman having been terminated on account of his misconduct, and such reason shall be substituted for the reasons specified in sub-section (1) of section twelve of this Act;[3] and

(*b*) for the purpose of compensation, the year's rent of the dwelling-house shall be taken to be the sum of seven pounds and sixteen shillings, or if it is shown that that sum exceeds an amount equal to fifty-two times the weekly rental value of the dwelling-house let free from rates, then such last-mentioned amount; and

(*c*) sub-sections (2) and (3) and paragraph (*b*) of sub-section (7) of section twelve of this Act shall not apply;[4] and

(*d*) any question as to whether compensation is payable under this section or as to the amount payable shall, on the application of the tenant or workman, be determined by a court of summary jurisdiction for the district in which the dwelling-house is situate, and the court may, in any case in which it appears to the court to be just, direct the payment by the tenant to the workman of a sum in respect of his expenses of appearing before the court, and any sum so directed to be paid shall be recoverable summarily from the tenant as a civil debt.[5]

(2) Where under this section the tenant of a holding seeks to obtain a certificate from a court of summary jurisdiction, the workman shall be entitled to appear before the court and shall, in the event of the certificate being refused, also be entitled to recover from the tenant

such sum as the court may direct in respect of any expenses incurred by him in appearing before the court. § 14.

(1) This section is intended to meet the case of what are called "tied cottages" or cottages let with a farm for the occupation of farm-labourers employed by the farmer. It applies where the labourer's occupation, whether it is under a contract of tenancy or not, is terminated "on account of the termination by the tenant of the holding of the employment of the workman." It is to be noticed that the section does not apply except where the cottage forms part of a holding let to a tenant. It has no application where cottages are let separately from the holding, though by the same landlord, or where the workman is in occupation of a cottage owned by the employer for whom he is working. It applies to the tied cottage the provisions of sects. 12 and 13 as to compensation for disturbance "so far as the same are applicable," a qualification which may give rise to some troublesome questions.

(2) A tenant of a holding in order to protect himself from the liability to pay compensation for disturbance under this section may apply to a Court of summary jurisdiction for the district for a certificate that the termination of the workman's occupation is necessary or expedient to enable the holding to be worked properly or to better advantage. The certificate must be obtained *before* the notice is given. Under sub-sect. 2, the workman may appear before the Court and contest the right of the tenant to obtain a certificate, and if the certificate is refused he will be entitled to recover his expenses from the tenant.

(3) Sub-sect. 1 of sect. 12 mentions certain reasons for giving a notice to quit which will disentitle the tenant to compensation for disturbance.

(4) Sub-sect. 2 of sect. 12 provides for the giving of a certificate by the agricultural committee of non-cultivation according to the rules of good husbandry; sub-sect. 3 provides for arbitration as to rent; and sub-sect. 7 paragraph (b) requires notice in writing of intention to make a claim for compensation to be given not less than one month before the termination of the tenancy. These provisions are not to apply to a claim for compensation under this section.

(5) Questions as to the liability for and amount of compensation under this section are determinable not by an arbitrator but by a Court of summary jurisdiction for the district.

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Compensation in case of Tenancy under Mortgagor.

Compensation to tenants when mortgagee takes possession.

15.[1] Where a person occupies a holding under a contract of tenancy with a mortgagor, which is not binding on the mortgagee,[2] then—

(1) the occupier shall, as against the mortgagee who takes possession, be entitled to any compensation which is, or would but for the mortgagee taking possession be, due to the occupier from the mortgagor as respects crops, improvements, tillages, or other matters connected with the holding, whether under this Act or custom or an agreement authorised by this Act;[3]

(2) if the contract of tenancy is for a tenancy from year to year or for a term of years, not exceeding twenty-one, at a rackrent, the mortgagee shall, before he deprives the occupier of possession otherwise than in accordance with the contract of tenancy, give to the occupier six months' notice in writing of his intention so to do, and, if he so deprives him, compensation shall be due to the occupier for his crops, and for any expenditure upon the land which he has made in the expectation of remaining in the holding for the full term of his contract of tenancy, in so far as any improvement resulting therefrom is not exhausted at the time of his being so deprived;[4]

(3) any sum ascertained to be due to the occupier for compensation, or for any costs connected therewith, may be set off against any rent or other sum due from him in respect of the holding, but unless so set off shall, as against the mortgagee, be charged and recovered in accordance with the provisions of this Act relating to the recovery of compensation due from a landlord who is a trustee.[5]

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(1) This section is repeated from the Act of 1908, where it took the place of sect. 2 of the Tenants Compensation Act, 1890.

Effect of leases by mortgagors.

(2) Previously to the Conveyancing Act, 1881, a lease made by a mortgagor after the mortgage was not binding on the mortgagee, and he could on taking possession at once evict the tenant as a trespasser: *Keech* v. *Hall* (1 Dougl. 21). A mere notice to the tenant from the mortgagee to pay rent to him was insufficient to create the relation of landlord and tenant between the mortgagee and tenant unless assented to by the tenant: *Rogers* v. *Humphreys* (5 L. J. K. B. 65; 4 A. & E. 299); and such relation was not created even if the tenant continued in possession after the receipt of such a notice: *Towerson* v. *Jackson* (61 L. J. Q. B. 36; (1891) 2 Q. B. 484). If, however, the tenant complied with the notice he became tenant from year to year of the mortgagee: *Corbett* v. *Plowden* (54 L. J. Ch. 109; 25 Ch. D. 678), and payment of rent to the mortgagee under compulsion operated as a discharge of rent to the mortgagor: *Underhay* v. *Read* (57 L. J. Q. B. 129; 20 Q. B. D. 209). A mortgagor who has mortgaged land after a lease made by him cannot recover possession of land on a forfeiture for breach of covenants in the lease, as he is no longer legally entitled to the reversion: *Matthews* v. *Usher* (69 L. J. Q. B. 856; (1900) 2 Q. B. 535); *Molyneux* v. *Richard* (75 L. J. Ch. 39; (1906) 1 Ch. 34). But as to leases made after the commencement of the Conveyancing Act, 1881, see sect. 10 of that Act, which provides that the person for the time being entitled to the income of the land leased may recover rent reserved by a lease, and take advantage of the covenants and provisions therein contained.

The law as above stated is applicable at present (subject to the tenant's rights under this Act) to all cases of mortgages where the operation of sect. 18 of the Conveyancing Act, 1881, is expressly excluded.

Conveyancing Act, 1881, s. 18.

Sect. 18 of the Conveyancing and Law of Property Act, 1881, provides:—

> "18.—(1) A mortgagor of land while in possession shall, as against every incumbrancer, have, by virtue of this Act, power to make from time to time any such lease of the mortgaged land, or any part thereof, as is in this section described and authorized.
>
> "(2) A mortgagee of land while in possession shall, as against all prior incumbrancers, if any, and as against the

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mortgagor, have, by virtue of this Act, power to make from time to time any such lease as aforesaid.

"(3) The leases which this section authorizes are—

"(i) An agricultural or occupation lease for any term not exceeding twenty-one years; and

"(ii) A building lease for any term not exceeding ninety-nine years.

"(4) Every person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.

"(5) Every such lease shall be made to take effect in possession not later than twelve months after its date.

"(6) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

"(7) Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.

"(8) A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him, be sufficient evidence.

* * * * *

"(13) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

* * * * *

"(16) This section applies only in case of a mortgage made after the commencement of this Act; but the provisions thereof, or any of them, may, by agreement in writing made after the commencement of this Act, between mortgagor and mortgagee, be applied to a mortgage made before the commencement of this Act, so, nevertheless, that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

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"(17) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting."

The result of the above provisions is that either mortgagor or mortgagee under a mortgage executed after December 31st, 1881, when in possession may, unless the operation of the Act is expressly excluded, grant a lease or enter into an agreement of tenancy of agricultural land for a term not exceeding twenty-one years, and such letting will be binding on the other of them. While in possession the mortgagor or mortgagee will be entitled to receive the rent and will be liable to the tenant for improvements for which compensation is payable under the Act, and also for compensation for disturbance in cases where it arises. The mortgagee, on going into possession, is entitled to enforce the covenants and conditions in the lease in the same way as if he had been a party to it: *Municipal Permanent Investment Building Society* v. *Smith* (58 L. J. Q. B. 61; 22 Q. B. D. 70). In *Robbins* v. *Whyte* (75 L. J. K. B. 38; (1906) 1 K. B. 25) it was held that a mortgagor who had granted a lease under the power given to him by sect. 18 could not accept a surrender of the lease without the concurrence of the mortgagee. But sect. 3 of the Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), empowers either a mortgagor or a mortgagee in possession to accept surrender of leases but for the purpose only of enabling a lease authorized under sect. 18 of the Act of 1881 or under any agreement pursuant to sect. 18 to be granted.

A covenant by a tenant to consume hay and fodder on the premises and to spread on the land all manure and compost produced on the farm touches and concerns the land, and the benefit of it, therefore, runs with the reversion. Such a covenant may be enforced by the purchaser of the land from a mortgagee under a mortgage made before the commencement of the Conveyancing Act, 1881, who has executed an agreement for a tenancy of the farm while not in possession: *Chapman* v. *Smith* (76 L. J. Ch. 394; (1907) 2 Ch. 97).

(3) In cases where the Conveyancing Act does not apply, or is excluded, and the tenancy is therefore not binding on the mortgagee, this sub-section provides that the tenant shall not lose his rights if the mortgagee refuses to accept him as tenant and takes possession. It not only gives him the right to compensation for

§ 15. improvements under the Act, but also the right to claim for crops, tillages, and acts of husbandry, which he might have claimed against his landlord as an outgoing tenant.

Right of tenant to notice before eviction.

(4) This sub-section gives additional rights to tenants holding under a tenancy from year to year or for a term not exceeding twenty-one years, not binding on the mortgagee, at a rack-rent, *i.e.*, a rent representing the full annual value of the land, no premium having been given. See *Re Sawyer and Whithall* (88 L. J. Ch. 474; (1919) 2 Ch. 333). In such cases (which would include most agricultural tenancies) the tenant is entitled as against any mortgagee to—

(i) Six months' notice in writing of intention to take possession. Apparently the notice need not be given to determine at any of the recognized quarter days, but may expire at any time.

(ii) In addition to compensation in respect of the matters mentioned in sub-sect. 1, the tenant may claim compensation for his crops which he leaves, and for any expenditure made by him in the expectation of holding on his tenancy until it expires in the natural course of events, so far as the results of such expenditure have not been exhausted. The question may arise whether the tenant will also be entitled to compensation for disturbance under sect. 12. If, as would seem to be the case, the notice of intention to deprive the occupier of possession required by sub-sect. 2 is a "notice to quit" within sect. 12, sub-sect. 1, a tenant receiving such notice would appear to come within that section and therefore to be entitled to compensation for disturbance.

Recovery of compensation.

(5) The sum due to the occupier for "compensation," which expression covers the various matters mentioned in the former part of the section, viz., crops, improvements, tillages, or other matters connected with the land, may be set off against rent or other sums due from the occupier, but is not recoverable against a mortgagee landlord personally. In default of payment the occupier will be entitled to a charge on the holding under sect. 20, to be obtained on application to the Ministry of Agriculture and Fisheries (see *post*, p. 71).

§ 16.

Arbitration.

Matters to be referred to arbitration.

16.—(1) Any question or difference arising out of any claim by the tenant of a holding against the landlord for compensation payable under this Act, or for any sums claimed to be due to the tenant from the landlord for any breach of contract or otherwise in respect of the holding, or out of any claim by the landlord against the tenant for waste wrongly committed or permitted by the tenant, or for any breach of contract or otherwise in respect of the holding, and any other question or difference of any kind whatsoever between the landlord and the tenant of the holding arising out of the termination of the tenancy of the holding or arising, whether during the tenancy or on the termination thereof, as to the construction of the contract of tenancy, and any other question which under this Act is referred to arbitration shall be determined, notwithstanding any agreement under the contract of tenancy or otherwise providing for a different method of arbitration, by a single arbitrator in accordance with the provisions set out in the Second Schedule to this Act.[1]

(2) Any such claim as is mentioned in this section shall cease to be enforceable after the expiration of two months from the termination of the tenancy unless particulars thereof have been given by the landlord to the tenant or by the tenant to the landlord, as the case may be, before the expiration of that period:[2]

Provided that, where a tenant lawfully remains in occupation of part of a holding after the termination of the tenancy, particulars of a claim relating to that part of the holding may be given within two months from the termination of the occupation.[3]

(3) Where a claim for compensation under this Act has been referred to arbitration, and the compensation payable under an agreement is by this Act to be substituted for compensation under this Act, such compensa-

§ 16. tion as is to be so substituted shall be awarded in respect of any improvements provided for by the agreement.[4]

(4) If in any arbitration under this Act the arbitrator states a case for the opinion of the county court on any question of law, the opinion of the court on any question so stated shall be final unless within the time and in accordance with the conditions prescribed by Rules of the Supreme Court either party appeals to the court of appeal, from whose decision no appeal shall lie.[5]

52 & 53 Vict c. 49. (5) The Arbitration Act, 1889, shall not apply to any arbitration under this Act.

(6) This section shall not apply in the case of a tenancy which terminated before the first day of January, nineteen hundred and twenty-one.[6]

(1) This sub-section is a repetition of sect. 18, sub-sect. 1 of the Agriculture Act, 1920. It is very comprehensive in referring all claims, questions and differences between landlord and tenant arising out of the termination of the tenancy, and also questions "arising whether during the tenancy or on the termination thereof, as to the construction of the contract of tenancy," to arbitration by a single arbitrator notwithstanding any agreement for a different method of arbitration. See the rules as to arbitration in the Second Schedule to the Act (*post*, p. 136). As to what may come within the enactment, see *Stewart* v. *Williamson* (80 L. J. P. C. 29; (1910) A. C. 455) and *Greenshields* v. *Roger* (91 L. J. P. C. 177; (1922) S. C. (H. L.) 140). It is, however, submitted that the words "shall be determined," although preventing any other form of arbitration, do not take away either the landlord's or tenant's common law remedies by action for breach of contract or in respect of other matters. See sect. 54 (*post*, p. 118), which appears expressly to preserve all such remedies.

(2) Except as mentioned below, no notice is now required to be given before the termination of the tenancy as to any of the claims referred to arbitration under sub-sect. 1 as was the case when sect. 6, sub-sects. 2 and 3 of the Act of 1908 were in force. The only requirement is that particulars of any claim under sub-sect. 1 must be given to the other party in writing before the expiration of two months from the termination of the tenancy and if not so given the claim will be unenforceable. The question

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Particulars of claim.

as to what particulars will be sufficient to satisfy the requirements of this sub-section was considered in *Jones* v. *Evans* (92 L. J. K. B. 35; (1923) 1 K. B. 12). It appears from that case that the particulars need not necessarily be in writing, and having regard to the severity of the penalty for not giving the particulars duly, viz., the unenforceability of the claim—the requirement as to particulars is not intended to be construed strictly, and it is in general sufficient if the document or conversation which contains the particulars gives an indication to the other party of the particular kind of claim which is going to be made, even though such particulars may have to be amplified when the parties come before the arbitrator. The "particulars" in *Jones* v. *Evans* which were held sufficient did not mention the sums claimed for the several items. The right to claim in respect of any matter not included in the particulars will be barred after the expiration of the two months. It should however not be overlooked (i) that a notice of intention to claim under sect. 9 of this Act for compensation for the continuous adoption of a special standard or system of farming must be given by the tenant before the termination of the tenancy, (ii) that a notice of intention to claim under sect. 10 for deterioration of the holding must be given by the landlord before the termination of the tenancy, and (iii) that notice of intention to claim compensation for disturbance under sect. 12 must be given by the landlord not less than one month before the termination of the tenancy. See Forms 28, 29, 30.

Termination of tenancy.

([3]) This proviso is intended to meet cases where the tenant has by agreement a right to hold over part of the farm after giving up the main portion. See *Swinburne* v. *Andrews* (92 L. J. K. B. 889; (1923) 2 K. B. 483) as to what is to be considered the "termination of the tenancy." In that case, Bankes, L. J., expressed the opinion that the words used in this sub-section only apply where the tenant has been allowed by a landlord to remain on after the cesser of the agreement of tenancy under a new agreement.

([4]) Under sects. 2, 3 (2), 4, and sect. 49 (6), compensation under agreements may in certain cases be substituted for compensation under the Act, and in such cases the arbitrator will be bound to follow the agreement and make his award in pursuance of it. The agreement, if made under sect. 4 in respect of an improvement comprised in Part III. of the First Schedule, or under sect. 49 (6) in respect of an improvement in the Third Schedule, must be "fair and reasonable" to exclude the right to claim

§§16, 17. under the Act. The question whether an agreement set up in answer to a claim under the Act secures to the tenant "fair and reasonable compensation" is a "difference" which is to be settled by arbitration under sub-sect. 1 of this section This has been so held in Scotland in the case of *Bell* v. *Graham* ((1908) Sess. Cas. 1060).

(5) Cases for the opinion of the County Court on questions of law may be stated by an arbitrator at any stage of the proceedings. See the Second Schedule, Rule 10. For provisions as to appeals from the County Court to the Court of Appeal see Rules of the Supreme Court, Order LVIII., Rule 20. The appeal must be by an eight days' notice of motion stating the grounds of appeal, and must be served on every party directly affected by the appeal and entered within twenty-one days from the date of the judgment. See Order LIX., Rules 10 and 12. When an application is made to a County Court judge to set aside an award under this Act on the ground of the arbitrator's misconduct, an appeal from the decision of the County Court judge lies to a Divisional Court under sect. 120 of the County Courts Act, 1888, and not to the Court of Appeal: *Williams* v. *Wallis and Cox* (83 L. J. K. B. 1296; (1914) 2 K. B. 478).

(6) In the case of tenancies which terminated before January 1st, 1921, the provisions of sect. 6 of the Agricultural Holdings Act, 1908, will still apply. Under that section notice of claim in respect of any improvement comprised in the First Schedule had to be given before the determination of the tenancy.

Provisions for expediting and reducing costs of arbitrations.

17.—(1) Subject as hereinafter provided, the Minister may by rules make such provision (not being inconsistent with the rules contained in the Second Schedule to this Act) as he thinks desirable for expediting, or reducing the costs of, proceedings on arbitrations under this Act.

(2) On an arbitration under this Act the arbitrator—

(*a*) shall state separately in his award the amounts awarded in respect of the several claims referred to him; and[1]

(*b*) may, if he thinks fit, make an interim award for the payment of any sum on account of the sum to be finally awarded.

(3) A rule made under this section shall be laid before each House of Parliament forthwith, and, if an address is presented to His Majesty by either House of Parliament within the next subsequent thirty days on which that House has sat next after any such rule is laid before it praying that the rule may be annulled, it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

(1) Sub-sect. 2 (a) of this section is imperative. The arbitrator "shall" state separately the amounts awarded in respect of the several claims referred to him. This appears to apply to every case, and goes further than rule 11 of the Second Schedule, which only requires the arbitrator to specify the amount awarded in respect of any particular improvement or any particular matter the subject of his award "on the application of either party." Sub-sect. 2 (b) is optional and discretionary. He may if he thinks fit make an interim award for payment of any sum on account of the sum to be finally awarded. This provision is apparently intended to meet cases of hardship caused by delay in the proceedings on an arbitration.

Determination of claims for compensation where a holding is divided.

18.—(1) Where a holding has become vested in more than one person in several parts and the rent payable by the tenant of the holding has not been apportioned with his consent or under any statute, the tenant shall be entitled to require that any compensation payable to him under this Act shall be determined as if the holding had not been divided, and the arbitrator shall, where necessary, apportion the amount awarded between the persons who for the purposes of this Act together constitute the landlord of the holding, and any additional costs of the award caused by the apportionment shall be directed by the arbitrator to be paid by those persons in such proportions as he shall determine.[1]

(2) This section shall not apply in the case of a tenancy which terminated before the first day of January, nineteen hundred and twenty-one.

(1) This section is intended to meet the case where a farm let

§§ 18, 19. at an entire rent has become divided in ownership either by sale, or by the death or will of the original proprietor, or by partition between joint tenants, or otherwise, among different persons. When a legal apportionment of the rent has been effected in any such case, separate tenancies will be created. The apportionment may at any time be effected with the consent of the tenant or he may claim to have it legally made by a jury: *Bliss* v. *Collins* (5 B. & Ald. 876). If the tenancy is determined before such apportionment has been made, the arbitrator is directed at the request of the tenant to assess any compensation payable under the Act as a whole as if the holding had not been divided and if necessary to apportion the amount awarded between the persons who for the purposes of the Act together constitute "the landlord" (see the definition in sect. 57 (1), *post*, p. 121). These persons will be severally liable only for the amounts respectively apportioned to them. The liability is not joint and several: see the County Court case of *Weston* v. *Devonshire* (*Duke*) ((1923), 12 L. J. C. C. R. 74).

Recovery of compensation and other sums due.

19. Where any sum agreed[1] or awarded under this Act to be paid for compensation costs or otherwise by a landlord or tenant of a holding is not paid within fourteen days after the time when the payment becomes due, it shall, subject as in this Act provided,[2] be recoverable upon order made by the county court as money ordered by a county court under its ordinary jurisdiction to be paid is recoverable.[3]

Agreement as to compensation.

(1) An agreement may be made between the landlord and tenant as to the amount of compensation payable by the former to the latter (see sect. 5), and if so made may be enforced under this section. Such agreement should be in writing. See Form 37.

(2) If the landlord is a mortgagee or trustee, no order for recovery against him personally can be made under this section. See sect. 15, sub-sect. 3, and sect. 41.

How money ordered to be paid by a County Court is recoverable.

(3) Money ordered to be paid by a County Court under its ordinary jurisdiction is recoverable by execution against the goods of the debtor, by the attachment of debts in the hands of third parties called garnishees, or by the imprisonment of the debtor under the Debtors Act, 1869 (32 & 33 Vict. c. 62), for any term not exceeding six weeks for default in payment of any debt or instalment of any debt in pursuance of any order or judgment

of the Court. See County Court Rules, Order XL. r. 7, and Form 421, *post*, in Appendix II. It is submitted that an application made to the County Court to enforce an award under this section is not in the nature of an action, and that the party against whom the application is made cannot bring in anything in the nature of a counter-claim or set-off in answer to the application. Upon proof of the award, and no question being raised as to its validity, it will be the duty of the County Court judge to make an order for the recovery of the sum awarded.

Charge on Holding for Compensation.

Power for landlord on paying compensation to obtain charge.

20.—(1) A landlord,[1] on paying to the tenant the amount due to him under this Act, or under custom or agreement, or otherwise, in respect of compensation for an improvement comprised in the First Schedule to this Act or in respect of compensation for disturbance, or on expending after notice given in accordance with this Act such amount as may be necessary to execute an improvement comprised in Part II. of the First Schedule to this Act, shall be entitled to obtain from the Minister an order in favour of himself, his executors, administrators, and assigns, charging the holding, or any part thereof, with repayment of the amount paid or expended, and of all costs properly incurred by him in obtaining the charge, with such interest, and by such instalments, and with such directions for giving effect to the charge, as the Minister thinks fit.[2]

(2) Where the landlord obtaining the charge is not absolute owner of the holding for his own benefit, no instalment or interest shall be made payable after the time when the improvement in respect whereof compensation is paid will, in the opinion of the Minister, have become exhausted.[3]

(3) Where the estate or interest of a landlord is determinable or liable to forfeiture by reason of his creating or suffering any charge thereon, that estate or interest shall not be determined or forfeited by reason of his

§ 20. obtaining a charge under this Act, anything in any deed, will, or other instrument to the contrary thereof notwithstanding.

(4) The sum charged shall be a charge on the holding, or the part thereof charged, for the landlord's interest therein and for all interests therein subsequent to that of the landlord; but so that, in any case where the landlord's interest is an interest in a leasehold, the charge shall not extend beyond the interest of the landlord, his executors, administrators, and assigns.[4]

(5) Any company now or hereafter incorporated by Parliament, and having power to advance money for the improvement of land, may take an assignment of any charge made under this section, or any like charge made under any repealed enactment, upon such terms and conditions as may be agreed upon between the company and the person entitled to the charge, and may assign any charge so acquired by them.[5]

(6) Where a charge may be made under this section for compensation due under an award, the person making the award shall, at the request and cost of the person entitled to obtain the charge, certify the amount to be charged and the term for which the charge may properly be made, having regard to the time at which each improvement in respect of which compensation is awarded is to be deemed to be exhausted.[6]

(7) A charge made under this section shall be a land charge within the meaning of the Land Charges Registration and Searches Act, 1888, as amended by any subsequent enactment, and may be registered accordingly.[7]

51 & 52 Vict. c. 51.

"Landlord."

(1) The word "landlord" in this section includes a landlord's executors, so that the executors of a landlord tenant for life, who have paid compensation to an outgoing tenant whose tenancy determined before the landlord's death, are entitled to obtain a charge on the holding under this section for the amount paid by them: *Gough* v. *Gough* (60 L. J. Q. B. 726; (1891) 2 Q. B. 664).

(2) The provisions contained in this section may be useful to

land-owners who are limited owners and desire to charge money expended in paying compensation for the benefit of their younger children or others. It is to be observed that not only sums paid for compensation for improvements, but also compensation for disturbance, may be charged on the holding. The section also facilitates the borrowing from a land improvement company (or others, see sub-sect. 5) of money by landlords to pay compensation. § 20.

There is no official form of application for a charge or of a charge under this section. Application to the Ministry of Agriculture and Fisheries for a charge should be supported by a statutory declaration proving payment of the compensation and that no part of it has been repaid to the applicant. If the award does not give the particulars mentioned in sub-sect. 6, a certificate will be required from the arbitrator or some other proper evidence of those particulars. The Act does not expressly require notice of the application for a charge to be served on remaindermen, or other persons interested in a settled estate, but the Ministry require notice to be given personally or by registered letter to the person entitled to the next estate in remainder. Application for charge.

Any charge obtained under this section must be registered as a land charge under the Land Charges Registration and Searches Act, 1888 (51 & 52 Vict. c. 51). See sub-sect. 7, *post*. If not so registered it will be void as against a purchaser for value of the land charged therewith.

This section applies to ecclesiastical and charity lands, as well as to land belonging to private proprietors. In the case of land belonging to a benefice, the Commissioners of Queen Anne's Bounty may, as well as the incumbent, obtain a charge for money paid by them in compensation (see sect. 46).

(3) In the case of the charge being in respect of or including money paid for compensation for disturbance, it does not seem that this sub-section will apply.

(4) The latter words of this section prevent a landlord who himself is a leaseholder from charging more than his own interest in the property leased.

(5) Charges under the Improvement of Land Act, 1864, and other special Improvement Acts, are by way of rent-charge, by which the money advanced, together with interest, is repaid over a term of years. Improvement of Land Acts.

The Improvement of Land Act, 1899 (62 & 63 Vict. c. 46), provides that where under the Improvement of Land Act, 1864, or any special Improvement Act, a charge is authorised in respect

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of an improvement of land, the period for repayment of the charge shall be such period, not exceeding forty years, as the Board of Agriculture, having regard to the character and probable duration of the improvement, determine.

Time of exhaustion of improvement.

(6) Under sub-sect. 2, where the landlord is not absolute owner of the holding for his own benefit, no instalment of, or interest on, any charge is to be made payable after the time when the improvement in respect of which the charge is made is to be deemed to be exhausted. That time is by this section to be fixed by the person making the award.

(7) The register of land charges is kept at the Land Registry Office. Any person may search the register on payment of the prescribed fee. Forms for the application to register a land charge and for the declaration to be made in support of an application to register may be obtained at the Land Registry Office.

Capital Money applicable for Compensation.

Capital money applicable for compensation.

21. Capital money arising under the Settled Lands Acts, 1882 to 1890,[1] may be applied—

(1) in payment as for an improvement authorised by those Acts of any money expended and costs incurred by a landlord under or in pursuance of this Act or any enactment hereby repealed, or under custom or agreement or otherwise, in or about the execution of any improvement comprised in Part I. or Part II. of the First Schedule to this Act;[2] and

(2) in discharge of any charge in respect of any such improvement created on a holding under this Act or any like charge made under any repealed enactment as if the charge were an incumbrance authorised by those Acts to be discharged out of that capital money.

Modes in which capital money may arise

(1) The following are some of the principal modes by which capital money arises under the Settled Land Act, 1882:—

1. By a sale or enfranchisement by the tenant for life or other limited owner (sect. 3).

2. By a fine on a grant or confirmation of a lease (sect. 7, and Settled Land Act, 1884, s. 4).
3. By a mining lease (three-fourths of the rent will be treated as capital money where the tenant for life is impeachable for waste, otherwise one-fourth) (sect. 11).
4. By the sale of timber cut by a tenant for life impeachable for waste (sect. 35).

under the Settled Land Act, 1881.

Money in Court, or in the hands of trustees, liable to be laid out in land to be settled, as the settled land, is also capital money under the Act (sects. 32, 33).

(2) This sub-section in effect adds to the improvements authorised by the Settled Land Acts, 1882 to 1890, those mentioned in Parts I. and II. of the First Schedule to this Act.

But capital money arising under the Settled Land Act, 1882, may not be expended in paying compensation to an agricultural tenant from year to year under this Act on terminating his tenancy, even though it be necessary to terminate it in order to effect an improvement authorised by the Settled Land Acts: *Re De la Warr's (Earl) Cooden Beach Estate* (82 L. J. Ch. 174; (1913) 1 Ch. 142).

Fixtures and Buildings.

Tenant's property in fixtures and buildings.

22.—(1) Any engine, machinery, fencing, or other fixture[1] affixed to a holding by a tenant, and any building erected by him thereon for which he is not under this Act[2] or otherwise entitled to compensation, and which is not so affixed or erected in pursuance of some obligation in that behalf or instead of some fixture or building belonging to the landlord, shall be the property of and be removable by the tenant before or within a reasonable time[3] after the termination of the tenancy:

Provided that—

(i) before the removal of any fixture or building the tenant shall pay all rent owing by him, and shall perform or satisfy all other his obligations to the landlord in respect of the holding:

(ii) in the removal of any fixture or building the tenant shall not do any avoidable damage to

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any other building or other part of the holding:

(iii) immediately after the removal of any fixture or building the tenant shall make good all damage occasioned to any other building or other part of the holding by the removal:

(iv) the tenant shall not remove any fixture or building without giving one month's previous notice in writing to the landlord of his intention to remove it:[4]

(v) at any time before the expiration of the notice of removal the landlord, by notice in writing given by him to the tenant, may elect to purchase any fixture or building comprised in the notice of removal, and any fixture or building thus elected to be purchased shall be left by the tenant, and shall become the property of the landlord, who shall pay to the tenant the fair value thereof to an incoming tenant of the holding.

(2) The provisions of this section shall apply to a fixture or building acquired since the thirty-first day of December, nineteen hundred, by a tenant in like manner as they apply to a fixture or building affixed or erected by a tenant, but shall not apply to any fixture or building affixed or erected before the first day of January, eighteen hundred and eighty-four.[5]

What are "fixtures."

(1) Fixtures include anything annexed to the freehold, and the law formerly was that the tenant could not remove anything fixed to the freehold without committing waste. The tenant might, however, remove fixtures put up for the ornament of the premises or convenience of his occupation. Such fixtures are called "tenant's fixtures," and include such articles as stoves, grates, hangings, cupboards, &c. They must, however, be but slightly fixed, and capable of being moved entire. Fixtures erected for the purpose of trade have also been excepted from the general rule, but the exception was not extended to fixtures put up for agricultural purposes: *Elwes* v. *Maw* (3 East, 28; 2

Tenant's fixtures.

Trade fixtures.

Sm. L. C., 12th edn. 188). In that case the fixtures were a beast-house, a carpenter's shop, a fuel house, a cart-house, a pump-house and fold-yard. In *Mears* v. *Callender* (70 L. J. Ch. 621; (1901) 2 Ch. 388) it was held that glass-houses erected for the purpose of his trade by a tenant carrying on the business of a market gardener were trade fixtures which might be removed by the tenant during his tenancy, apart from the provisions of this section which were excluded by the terms of the tenancy. § 22.

This section enables an agricultural tenant to remove any engine, machinery, fencing, or other fixture, or any building erected by him for which he is not entitled to compensation under the Act. The fixture to be removable must be "affixed to the holding," *i.e.*, some "parcel of land held by the tenant" (sect. 57), and it may be doubted whether it would include an addition to the dwelling-house not coming within the ordinary description of "tenant's fixtures."

It is open to the parties to an agricultural contract of tenancy to contract themselves out of the operation of this section: *Premier Dairies, Ltd.* v. *Garlick* (89 L. J. Ch. 332; (1920) 2 Ch. 17). In that case a covenant by a lessee to leave, surrender and yield up to the lessor at the end or sooner determination of the term "all new and other buildings and erections" was held by Peterson, J., to exclude the provisions of the section and the lessee was consequently not entitled to remove buildings and fixtures erected by him during the tenancy.

(2) Certain fixtures in the nature of buildings are comprised in the first part of the First Schedule.

Within what time a fixture may be removed.

(3) It is to be noticed that a reasonable time is given for the removal of fixtures. In cases to which the Act does not apply and in the absence of express contract it is doubtful whether a tenant can remove fixtures claimed by him after the expiration of the tenancy: *Pugh* v. *Arton* (38 L. J. Ch. 619; L. R. 8 Eq. 626); *Ex parte Stephens, In re Lavies* (47 L. J. Bkcy. 22; 7 Ch. D. 127). In *In re Glasdir Copper Mines* (73 L. J. Ch. 461; (1904) 1 Ch. 819) a mortgagee or purchaser from a tenant of trade fixtures was held to have a right to remove them within a reasonable time after the surrender of the lease. But in *Barff* v. *Probyn* (64 L. J. Q. B. 557), a tenant removing fixtures after the expiration of his lease was held to be a trespasser and liable for damages for wrongful removal and conversion. The fixture by this section is to become *the property of the tenant.* It therefore seems that the landlord could not prevent the removal by the tenant of his own property, even after the expiration of a

§ 22. reasonable time. See *Re Walker, Ex parte Gould* (13 Q. B. D. 454). Refusal by the landlord to permit severance and removal of fixtures would give the tenant a right of action for their value: *Thomas* v. *Jennings* (66 L. J. Q. B. 5). A surrender of a lease *primâ facie* includes all the fixtures on the property: *Leschallas* v. *Woolf* (77 L. J. Ch. 345; (1908) 1 Ch. 641).

For the general law as to fixtures, see Dixon, p. 525; Woodfall, p. 783.

See Form 11.

(4) In *Re Harvey and Mann's Arbitrations* (89 L. J. K. B. 687; 123 L. T. 242), it was held that a tenant who omits under this sub-section to give notice to his landlord of his intention to remove a fixture or building whereby the landlord is prevented from exercising the option given to him by the Act to purchase the same, cannot afterwards claim compensation for expenses or loss suffered through the removal of the fixture or building under provisions in the Act for compensation for disturbance.

(5) The Agricultural Holdings Act, 1900, came into force on January 1st, 1901, and the Agricultural Holdings (England) Act, 1883, came into force on January 1st, 1884.

Extension of Tenancies under Leases.

Extension of tenancies under leases for a term of years.

23.—(1) In the case of a tenancy of a holding for a term of two years or upwards, the tenancy shall not terminate on the expiration of the term for which it was granted, unless not less than one year nor more than two years before the date fixed for the expiration of the term a written notice has been given by either party to the other of his intention to terminate the tenancy, and any notice so given shall be deemed to be a notice to quit for the purposes of this Act.[1]

(2) If no such notice is given, the tenancy shall, as from the expiration of the term for which it was granted, continue as a tenancy from year to year, but otherwise so far as applicable on the terms of the original tenancy.

(3) This section shall not apply to any tenancy granted, or agreed to be granted, before the first day of January, nineteen hundred and twenty-one.[2]

(4) In any case to which this section shall apply,

it shall apply notwithstanding any agreement to the contrary. §§23,24.

(1) This section repeats sect. 13 of the Agriculture Act, 1920, which was a new departure, inasmuch as it made at least one year's notice necessary for the termination of a tenancy for a term of two years or more, which apart from this section would have determined without any notice at the end of the term: Woodfall's Landlord and Tenant (21st edn.), p. 430. The section however does not apply to a letting for a term of one year only or other definite term less than two years. The notice to determine the tenancy will be a notice to quit for the purposes of this Act, and therefore if given by the landlord will involve the consequences of such a notice, viz. the right of the tenant to compensation for disturbance under sect. 12 of the Act unless it is given for any of the reasons mentioned in sub-sect. 1 and is stated to be so given.

(2) The section does not apply to any tenancy granted or agreed to be granted before the commencement of the Agriculture Act, 1920 (January 1st, 1921). In the case of such a tenancy a question arises as to the tenant's right to compensation for disturbance. Under sect. 12 of the Act of 1908, the tenant would have been entitled to compensation for disturbance if the landlord without good and sufficient cause and for reasons inconsistent with good estate management having been requested in writing at least one year before the expiration of the tenancy refused to renew it. But this section is now repealed and there being no notice to quit required in the case of a tenant under a current lease or tenancy for a fixed term he will not be entitled to compensation for disturbance under sect. 12 of this Act, which only applies where there has been a notice to quit. He is apparently therefore left without any right of compensation for unreasonable disturbance unless it is preserved to him by sect. 38 of the Interpretation Act, 1889, which seems doubtful.

Extension of tenancies determined by death.

24.—(1) Where the tenancy of any holding held by a tenant at a rackrent determines by the death or cesser of the estate of any landlord entitled for his life, or for any other uncertain interest, instead of claims to emblements, the tenant shall continue to hold and occupy the holding until the occupation is determined by a twelve months' notice to quit expiring at the end of a year of

§ 24. the tenancy, and shall then quit upon the terms of his tenancy in the same manner as if the tenancy were then determined by effluxion of time or other lawful means during the continuance of his landlord's estate.[1]

(2) The succeeding landlord shall be entitled to recover from the tenant, in the same manner as his predecessor could have done, a fair proportion of the rent for the period which may have elapsed from the date of the death or cesser of the estate of such predecessor to the time of the tenant so quitting.[2]

(3) The succeeding landlord and the tenant respectively shall as between themselves and as against each other be entitled to all the benefits and advantages and be subject to the terms, conditions and restrictions to which the preceding landlord and such tenant respectively would have been entitled and subject in case the tenancy had determined in manner aforesaid at the expiration of the said twelve months' notice.

(1) The Landlord and Tenant Act, 1851 (14 & 15 Vict. c. 25), applied to any lease or tenancy of any farm or lands held by a tenant at rack rent determining by the death or cesser of the estate of any landlord entitled for his life or for any uncertain interest (*e.g.*, a tenancy of glebe lands which is determined by the death of the incumbent or vacation of his benefice). It provided that instead of a claim to emblements the tenant should continue to hold and occupy such farm or lands until the expiration of the then current year of the tenancy and then should quit upon the terms of his lease or tenancy. In lieu of this provision this section provides that the tenant in such a case shall be entitled to continue in occupation until the occupation is determined by a twelve months' notice to quit, when he will have the rights given by this Act as to compensation for disturbance, &c. It is to be presumed that he will hold as yearly tenant upon the terms of his lease or tenancy agreement so far as applicable, and by virtue of sub-sect. 3 the succeeding landlord and the tenant will at the date of the expiration of the twelve months' notice to quit be respectively in the same legal relation to one another, as the preceding landlord and tenant would have been if that date had been the date of the death

or cesser of the estate of the previous landlord. The Act of 1851 was held to apply to any case where there might have been a claim to emblements, *e.g.*, to a cottage with about an acre of land cultivated as a garden and partly sown with corn and planted with potatoes: *Haines* v. *Welch* (L. R. 4 C. P. 91; 38 L. J. C. P. 118).

(2) The "fair proportion" of the rent to be recovered by the succeeding landlord will, it is presumed, be ascertainable under the Apportionment Act, 1870 (33 & 34 Vict. c. 35), which provides that all rents should be considered as accruing from day to day and be apportionable accordingly.

Miscellaneous Rights of Landlord and Tenant.

Notices to quit.

25.—(1) Notwithstanding any provision in a contract of tenancy to the contrary, a notice to quit a holding shall be invalid if it purports to terminate the tenancy before the expiration of twelve months from the end of the then current year of tenancy; but nothing in this section shall extend to a case where a receiving order in bankruptcy is made against the tenant.[1]

(2) This section shall not apply to—

(*a*) any notice given by or on behalf of the Admiralty, War Department, or Air Council under the provisions of any agreement of tenancy where possession of the land is required for naval, military, or air force purposes; or

(*b*) any notice given by a corporation carrying on a railway, dock, canal, water, or other undertaking in respect of any land acquired by the corporation for the purposes of their undertaking or by a government department or local authority where possession of the land is required by the corporation, government department or authority for the purpose (not being the use of the land for agriculture) for which it was acquired by the corporation,

§§25, 26.

department, or authority or appropriated under any statutory provision; or

(*c*) any notice given in pursuance of a provision in the contract of tenancy authorising the resumption of possession of the holding or some part thereof for some specified purpose, unless that purpose is the use of the land for agriculture; or

(*d*) any notice given by a tenant to a sub-tenant;[2] or

(*e*) any notice given before the first day of January, nineteen hundred and twenty-one.

(1) Sect. 22 of the Agricultural Holdings Act, 1908, which made a year's notice to quit necessary in cases where a half-year's notice was by law necessary, could be and frequently was excluded by agreement. The present section, which is substituted for sect. 22, cannot be so excluded, so that, except in the excepted cases, a notice to expire less than twelve months from the end of the then current year of tenancy is henceforth invalid whether given by the landlord or by the tenant and whatever may be the provisions of the contract of tenancy. The case of a receiving order in bankruptcy made against the tenant is excluded, although in most contracts of tenancies there is a proviso for re-entry and determination of the tenancy upon (amongst other things) the bankruptcy of the tenant without the necessity of serving any notice to quit. The section appears only to apply where a notice to quit is required for the termination of a tenancy and not where the tenancy may be determined by re-entry without any previous notice. It has been held to apply to the case of a notice to determine a lease for a term of years given in pursuance of an option to either party to determine it at some intermediate period, *e.g.*, a lease for twenty-one years terminable by notice at the end of the seventh or fourteenth year: *Edell* v. *Dulieu* (92 L. J. K. B. 559; (1923) 2 K. B. 247; affirmed in H. L., (1923) W. N. 313; 40 T. L. R. 84).

(2) This exception in the case of a notice by a tenant to a sub-tenant is curious. It would seem to enable a leaseholder to sub-let his land upon a tenancy terminable on less than twelve months' notice to quit.

Restriction of notices to quit.

26.[1]—(1) On the making of any contract for sale of a holding or any part of a holding held by a tenant from

year to year any then current and unexpired notice to determine the tenancy of the holding given to the tenant either before or after the commencement of this Act shall, if the contract for sale is made by the person by whom the notice to quit was given, be null and void unless the tenant has, after the nineteenth day of August, nineteen hundred and nineteen, and prior to such contract of sale, by writing, agreed that such notice shall be valid. § 26.

(2) This section shall not apply to a contract for sale to a government department or local authority for the purpose of providing small holdings or allotments, or for any other public purpose made before the twentieth day of August, nineteen hundred and twenty-two.[2]

(1) This section is a re-enactment of the material part of the Agricultural Land Sales (Restriction of Notices to Quit) Act, 1919 (9 & 10 Geo. 5, c. 63), as amended by the Agriculture Act, 1920, Sched. I. The Act was passed to meet the alleged hardship of tenant farmers being dispossessed of their holdings in order to give vacant possession to purchasers from their landlords. In *Robinson* v. *Nesbitt* (64 Sol. J. 291; (1920) W. N. 57) Russell, J., held that the Act applied in the event of sales made during the pendency of the notice to quit (1) where the sale is a sub-sale of an interest under a previous contract; (2) to equitable as well as legal owners; (3) where the notice is given by one person and the sale is by another; and (4) to the whole holding though the sale is only of a part thereof. The Act of 1920 amended the Act of 1919 by restricting its operation to cases where the contract for sale is made by the person by whom the notice to quit was given, so that in the case of a vendor who has given notice to quit after the original sale at the request of a purchaser, a subsequent sub-sale by the purchaser will not avoid the notice. In *Brooks* v. *Bloor* (90 L. J. K. B. 577), decided before the passing of the Act of 1919, the plaintiff entered into a contract with several, but not all, of the persons whose consents were necessary for the purchase of certain glebe land under the Church Buildings Act, 1839. The defendant was at that time in occupation of the land as a yearly tenant, but notice to quit had been served upon him by the vendors. The conveyance was executed after the passing of the Act by all the persons whose consents were necessary to the validity of the

§§ 26, 27.

sale. It was held that the notice to quit was not avoided under the Act by the fact that some of the necessary consents were testified after the passing of the Act by the execution of the conveyance inasmuch as they related back to the date of the contract of sale. In *Blay* v. *Dadswell* (91 L. J. K. B. 739; (1922) 1 K. B. 632) it was held that the Act of 1919 applied so as to avoid a current notice to quit given by the vendor where the purchaser, before the amendment introduced by the Agriculture Act, 1920, came into force, had made a sub-sale of part of the property to the tenant himself.

(2) It would seem that this sub-section only exempts from the operation of sub-sect. 1 the case of any such contract for sale as is mentioned which was made before August 20th, 1922, that is, the expiration of three years from the passing of the Agricultural Land Sales (Restriction of Notices to Quit) Act, 1919. Its operation, therefore, is now spent.

Resumption of possession of part of holding by landlord.

27.—(1) Where a notice to quit is given by the landlord of a holding to a tenant from year to year with a view to the use of land for any of the following purposes:—

(i) The erection of farm labourers' cottages or other houses with or without gardens;

(ii) The provision of gardens for farm labourers' cottages or other houses;

(iii) The provision of allotments;

(iv) The provision of small holdings as defined by the Small Holdings and Allotments Acts, 1908 to 1919;[1]

(v) The planting of trees;

(vi) The opening or working of any coal, ironstone, limestone, brick earth, or other mineral, or of a stone quarry, clay, sand, or gravel pit, or the construction of any works or buildings to be used in connection therewith;

(vii) The making of a watercourse or reservoir;

(viii) The making of any road, railway, tramroad, siding, canal, or basin, or any wharf, pier, or other work connected therewith;

and the notice states that it is given with a view to any such use— § 27.

(*a*) it shall, by virtue of this Act, be no objection to the notice that it relates to part only of the holding;[2] and

(*b*) the provisions of this Act respecting compensation shall apply as if the part to which the notice relates were a separate holding;[3] and

(*c*) the tenant shall be entitled to a reduction of rent proportionate to the part to which the notice relates, and in respect of any depreciation of the value to him of the residue of the holding caused by the severance, or by the use to be made of the part severed, and the amount of that reduction shall be settled as in case of compensation under this Act:[3]

Provided that the tenant may, at any time within twenty-eight days after service of the notice to quit, serve on the landlord a notice in writing to the effect that he accepts it as a notice to quit the entire holding, to take effect at the expiration of the then current year of tenancy; and the notice to quit shall have effect accordingly.

(2) Where the landlord of a holding gives notice, in pursuance of a provision in that behalf contained in the contract of tenancy, of his intention to resume possession of some part of the holding, the provisions of paragraphs (*b*) and (*c*) of subsection (1) of this section (but not including the proviso thereto) shall apply as if the notice were such a notice to quit as is mentioned in that subsection:

Provided that, in assessing the compensation payable to the tenant and the reduction of rent, the arbitrator shall take into consideration any benefit or relief allowed to the tenant under the contract of tenancy in respect of any land resumed in pursuance of such provision.

(1) A small holding is defined by the Small Holdings and Allot-

§§ 27-29.

ments Act, 1908 (8 Edw. 7, c. 36), s. 61, as meaning "an agricultural holding which exceeds one acre and either does not exceed fifty acres, or, if exceeding fifty acres, is at the date of sale or letting of an annual value for the purposes of income-tax not exceeding 50*l*."

(2) Apart from this section and in the absence of a power in the contract of tenancy, a notice to quit extending to part only of the demised premises is bad: *Doe* d. *Rodd* v. *Archer* (14 East, 244); *Re Bebington's Tenancy* (90 L. J. Ch. 296; (1921) 1 Ch. 559).

See Forms 12 and 13.

(3) Paragraphs (b) and (c) of this section (but not including the proviso thereto) are by sub-sect. 2 of this section applied to cases where a landlord gives notice in pursuance of a provision in that behalf in the contract of tenancy to recover possession of some part of his holding. "The provisions of this Act respecting compensation" includes compensation of any kind under the Act whether for improvements executed by the tenant or for disturbance.

Power of entry by landlord.

28. The landlord of a holding or any person authorised by him may at all reasonable times enter on the holding for the purpose of viewing the state of the holding.[1]

(1) Apart from this section, unless an express right of entry is reserved, a landlord has no right to enter his tenant's premises to repair, or for any other purpose. If he does so, he is a trespasser.

Penal rents and liquidated damages.

29. Notwithstanding any provision in a contract of tenancy making the tenant of a holding liable to pay a higher rent or other liquidated damages in the event of any breach or non-fulfilment of a term or condition in the contract, a landlord shall not be entitled to recover, by distress or otherwise, any sum in consequence of any such breach or non-fulfilment in excess of the damage actually suffered by him in consequence of the breach or non-fulfilment:

Provided that this section shall not apply to any term or condition in a contract against the breaking up of permanent pasture, the grubbing of underwoods, or the

felling, cutting, lopping, or injuring of trees, or regulating the burning of heather.[1] § 29.

(1) According to the long-established doctrine of equity, wherever a penalty is inserted merely to secure the performance of some act, or the enjoyment of some right or benefit, the performance of such act or the enjoyment of such right or benefit is considered the substantial and principal intent of the instrument, and the penalty only accessory. In such cases, therefore, the Court relieves against the penalty and decrees compensation in lieu thereof proportionate to the damage actually sustained: *Sloman* v. *Walter* (1 Bro. C. C. 418; 2 Wh. & Tu. L. C. 8th edn. 264). Where, however, a sum is agreed upon by the parties as liquidated damages or the price to be paid for doing or refraining from doing a certain act, the Court will not interfere. In *Rolfe* v. *Peterson* (2 Bro. P. C. 436), the lessee covenanted not to plough up any of the ancient meadow or pasture ground, and if he did, to pay an additional rent of 5*l*. per acre. Lord Camden looked upon the additional rent as a penalty, and decreed that the tenant should be relieved, and directed an issue to ascertain the actual damage suffered, but the House of Lords overruled the decree. In *Jones* v. *Green* (3 Y. & J. 298), Alexander, C.B., says: "Since the case of *Rolfe* v. *Peterson* it has always been understood in all cases between the landlord and tenant, whether the term used has been 'penalty' or 'liquidated damages,' or 'additional rent,' or any other similar expression, that it should not be considered as a penalty in order to protect the defendant from answering, but as stipulated damages or additional rent." See Dixon, p. 594. But in *Willson* v. *Love* (65 L. J. Q. B. 474; (1896) 1 Q. B. 626), where a lease contained a covenant not to sell hay or straw off the premises during the last twelve months of the term, and provided that an additional rent of 3*l*. per ton should be payable by way of penalty for every ton of hay or straw so sold off, and it appeared that there was a substantial difference between the manurial value of hay and that of straw, it was held that the sum so made payable was a penalty and not liquidated damages, and that only the actual manurial value of the hay and straw sold off could be recovered. Generally speaking, where a sum is by contract payable for breach of a stipulation, and is proportioned to the extent of the breach, it is treated as liquidated damages and not a penalty: *Clydebank Engineering and Shipbuilding Co.* v. *Yzquierdo* (74 L. J. P. C. 1; (1905) A. C. 6).

Penalties to secure performance of contracts.

The result of this section is to allow the actual damage only,

§§29, 30. and not the "higher rent or other liquidated damages" to be recovered in every case except in respect of covenants or conditions against breaking up permanent pasture, grubbing underwoods, or felling, cutting, lopping, or injuring trees, or regulating the burning of heather, in which cases the law will remain as before.

Freedom of cropping and disposal of produce.

30.—(1) Notwithstanding any custom of the country, or the provisions of any contract of tenancy or agreement respecting the method of cropping of arable lands, or the disposal of crops, a tenant of a holding shall have full right to practise any system of cropping of the arable land on the holding and to dispose of the produce of the holding without incurring any penalty, forfeiture, or liability:[1]

Provided that he shall previously have made, or, as soon as may be, shall make, suitable and adequate provision to protect the holding from injury or deterioration, which provision shall, in the case of disposal of the produce of the holding, consist in the return to the holding of the full equivalent manurial value to the holding of all crops sold off or removed from the holding in contravention of the custom, contract, or agreement.[2]

This subsection shall not apply—

(*a*) in the case of a tenancy from year to year, as respects the year before the tenant quits the holding or any period after he has given or received notice to quit which results in his quitting the holding; or

(*b*) in any other case, as respects the year before the termination of the tenancy.[3]

(2) If the tenant exercises his rights under this section in such a manner as to injure or deteriorate the holding, or to be likely to injure or deteriorate the holding, the landlord shall, without prejudice to any other remedy which may be open to him, be entitled to recover damages in respect of such injury or deterioration at any time, and, should the case so require, to obtain an injunction

restraining the exercise of the rights under this section in that manner.[4]

(3) A tenant shall not be entitled to any compensation in respect of improvements comprised in Part III. of the First Schedule to this Act which have been made for the purpose of making such provision to protect the holding from injury or deterioration as is required by this section.[5]

(4) In this section the expression "arable land" shall not include land in grass which by the terms of any contract of tenancy is to be retained in the same condition throughout the tenancy.[6]

([1]) The section gives freedom of cropping on arable lands, and of disposal of crops, whether from arable or grass land, notwithstanding any contract or custom to the contrary. It is submitted that the words "any system of cropping" do not render it necessary for the tenant to adopt some recognised system of rotation. As the freedom of cropping only extends to arable lands, grass lands may still be protected by agreement from excessive mowing or deterioration in other ways. In the Scottish case of *Taylor* v. *Steel-Maitland* ((1913) S. C. 562), it was held that market garden ground is not "arable land" within the meaning of the section, and therefore provisions of a lease respecting the cultivation of such ground are binding on the tenant notwithstanding this section.

([2]) The provision made to protect the holding from injury or deterioration by the return of the "full equivalent manurial value" does not apply to all land, but only to cases where the sale or removal is in contravention of some custom, contract, or agreement. It is therefore desirable, in order to protect the land, either to insert in leases and tenancy agreements express covenants or agreements with regard to cropping and selling off, which will not be actually enforceable until the last year of the tenancy (see *Meggeson* v. *Groves*, 86 L. J. Ch. 145; (1917) 1 Ch. 158), but if broken will bind the tenant to preserve the holding from injury or deterioration, or to insert an express covenant or agreement against injury or deterioration of the holding. If no such covenant or agreement is included in the lease or agreement, compensation to the landlord for deterioration of the holding may be claimed under sect. 10 of this Act (*ante*, p. 35), but notice in

§ 30. writing of such a claim must be given before termination of the tenancy. A covenant to consume on the premises all hay and fodder and to spread on the land all manure and compost produced and not to sell off any hay or fodder touches and concerns the land, and the benefit of it runs with the reversion in favour of an assignee of the land: *Chapman* v. *Smith* (76 L. J. Ch. 394; (1907) 2 Ch. 97).

It is submitted that "full equivalent manurial value" is an expression wide enough to include the mechanical as well as the chemical value of the crops sold off.

See Forms 21, 22, 23, 24, 25, and 26.

(3) Where under a tenancy agreement a tenant contracts not to sell any hay without the landlord's consent, clause (b) will prevent his selling during the last year of the tenancy any hay whether the produce of that year or of the previous year without such consent: *Meggeson* v. *Groves* (86 L. J. Ch. 145; (1917) 1 Ch. 158).

(4) It is to be noted that this sub-section, giving the landlord a right to damages for past injury and to an injunction to restrain apprehended damage, only applies "if the tenant exercises his rights under this section," that is to say, where what the tenant does is in contravention of some custom, contract or agreement, so that, as pointed out above, covenants or agreements as to cropping and selling off will still in most cases be required although sect. 10 of this Act makes them less essential than before. See Forms 21, 22 and 23.

The damages given by this sub-section for injury or deterioration may be recovered "at any time," which includes the time when the tenancy is continuing, so that it will not be necessary for a landlord to wait until its determination before making a claim.

(5) Where a claim is made on the determination of a tenancy in respect of any of the improvements comprised in Part III. of the First Schedule, the claim may be defeated by showing that they were made as a manurial equivalent for the purpose of protecting the holding from the injury or deterioration that would have been caused by the tenant's breach of the custom or covenants which, but for this section, would have been binding upon him.

(6) The object of this sub-section is apparently to secure that the freedom of cropping allowed in respect of arable land shall not extend to any recently laid down grass land which may not have been sufficiently long in that condition to justify its being treated as old meadow or pasture, but it is to be noted that it only applies if the land in question is by the terms of the contract

"to be retained in the same condition," *i.e.*, as grass, throughout the tenancy. Having regard to this provision, it may be advisable to insert in all leases and tenancy agreements an express covenant against breaking up any land in permanent grass at the commencement of the tenancy, whether recently laid down or not.

Prohibition of removal of manure, &c., after notice to terminate the tenancy.

31. Where notice to terminate the tenancy of a holding is given, either by the tenant or by the landlord, the tenant shall not, subject to any agreement to the contrary, at any time after the date of the notice, sell or remove from the holding any manure or compost, or any hay or straw or roots grown in the last year of the tenancy, unless and until he has given the landlord or incoming tenant a reasonable opportunity of agreeing to purchase on the termination of the tenancy at their fair market value, or at such other value as is provided by the contract of tenancy, the said manure, compost, hay, straw, or roots.[1]

(1) This section is a statutory enactment of what is usually provided in relation to agricultural tenancies either by the contract of tenancy or by the custom of the country. It is to be noticed that the prohibition of removal of manure and compost is not confined to that produced in the last year of the tenancy as in the case of hay and straw. The price to be paid by the landlord or incoming tenant is, unless otherwise agreed, "the fair market value" and not the "consuming" or "spending" value which is more usually adopted.

It will in most cases be advisable in a contract of tenancy to retain the usual provision against sale or removal of manure, hay, straw, &c., and not to rely merely on this clause.

It is to be remembered that under sect. 30 of the Act a tenant, notwithstanding any custom or contract to the contrary, may dispose of the produce of his holding freely except in the last year of his tenancy, but he is put under an obligation to protect the holding from injury or deterioration by returning the manurial equivalent of crops sold off or removed.

Record of holding.

32. If the landlord or tenant of a holding at any time during the tenancy so requires, a record of the condition of the buildings, fences, gates, roads, drains, ditches and

§§ 32, 33. cultivation of the holding, and, if so required by the tenant, a record of any existing improvements executed by the tenant or for which the tenant has with the written consent of his landlord paid compensation to an outgoing tenant and of any fixtures or buildings which under section twenty-two of this Act the tenant is entitled to remove, shall be made by a person to be appointed in default of agreement by the Minister, and in default of agreement the cost of making any such record shall be borne by the landlord and tenant in equal shares.[1]

(1) This section was substituted by the Act of 1920 for sect. 27 of the Act of 1908. It is more comprehensive than the repealed section in extending to improvements for which the tenant is entitled to compensation and fixtures and buildings removable by him under sect. 22 of the Act. A record under this section may be required at any time during the tenancy and not at the commencement only. The provision as to the cost of the record may be varied by agreement between the parties.

Extension of meaning of "holding."

33.—(1) Where the land comprised in a contract of tenancy is not a holding within the meaning of this Act by reason only of the fact that the land so comprised includes land (hereinafter referred to as "the non-statutory land") which, owing to the nature of the buildings thereon or the use to which it is put, would not, if it had been separately let, be a holding within the meaning of this Act, the provisions of this Act relating to compensation for improvements and disturbance shall, unless otherwise agreed in writing, apply to the part of the land exclusive of the non-statutory land as if that part were a separate holding.[1]

(2) This section shall not apply in relation to a contract of tenancy made before the first day of January, nineteen hundred and twenty-one.

(1) In *Re Lancaster and Macnamara* (87 L. J. K. B. 1250; (1918) 2 K. B. 472) it was held that where 86 acres of pastoral land and an inn were demised together, the inn being rated by the

local authority at 32*l.* and the rest of the land demised at 102*l.* 15*s.*, the tenant was not entitled to compensation for improvements under sect. 1 of the Act of 1908, as the premises were not a "holding" within the definition in sect. 48 of the Act, not being "wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral." This section is intended to meet such a case, where agricultural property is included in one letting with property of a different character, and it applies the provisions of the Act as to compensation for improvements and disturbance (but not otherwise) to the part of the land, exclusive of the non-statutory land, as if it were a separate holding. The section does not apply in relation to a contract of tenancy made before January 1st, 1921, and it may be excluded by an agreement in writing, so that the application of the Acts can thus be avoided in cases where the letting includes substantial property of a character not coming within the scope of the Acts.

Distress.

Limitation of distress in respect of amount and time.

34. It shall not be lawful for a landlord entitled to the rent of a holding to distrain for rent which became due in respect of that holding more than one year before the making of the distress:[1]

Provided that, where it appears that according to the ordinary course of dealing between the landlord and the tenant of the holding the payment of rent has been deferred until the expiration of a quarter or half-year after the date at which the rent legally became due, the rent shall, for the purpose of this section, be deemed to have become due at the expiration of that quarter or half-year, and not at the date at which it legally became due.[2]

The law relating to distress.

(1) Under the Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 42, the landlord may distrain for six years' arrears of rent, and no more. This section shortens the period for making a distress for rent to one year in the case of tenancies within the operation of the Act, that is, all agricultural tenancies. A landlord cannot distrain till the day after the rent becomes due: *Duppa* v. *Mayo* (1 Saund. 287). No distress can be made between sunset and sunrise: *Tutton* v. *Darke* (5 H. & N. 746). If rent is made payable quarterly "in advance if required," the landlord may distrain at any time during the quarter after demand:

§ 34.

London and Westminster Discount Co. v. *London and North Western Ry.* (62 L. J. Q. B. 370; (1893) 2 Q. B. 49). A landlord is bound to allow a set off of the compensation due to the tenant against the rent due (sect. 37).

Where an agreement for a lease provided that the lease should contain stipulations making the rent payable in advance on demand, and the tenant entered and held under the agreement, it was held that the lessee was subject to the same right of distress as if a lease had been granted, and that if under the terms of the lease a year's rent would have been payable in advance on demand, a distress for that was lawful: *Walsh* v. *Lonsdale* (52 L. J. Ch. 2; 21 Ch. D. 9).

Who may distrain.

The person legally entitled to the immediate reversion on a lease is the person entitled to distrain by virtue of the common law. A mortgagee, who has given notice of the mortgage to a tenant holding land under a lease or tenancy created prior to the mortgage, may distrain for rent in arrear at the time of the notice, or becoming in arrear subsequently: *Moss* v. *Gallimore* (1 Dougl. 279; 1 Sm. L. C. 12th edn. 580). The Conveyancing Act, 1881, s. 18, empowers a mortgagor or mortgagee while in possession to let the mortgaged land for agricultural purposes for any term not exceeding twenty-one years. When a lease is made by a mortgagor in possession under the powers conferred by this Act, the mortgagee, on giving notice to the tenant and going into possession, is entitled to enforce the covenants and conditions contained in the lease in the same way as if he had been a party to it: *Municipal, &c. Society* v. *Smith* (58 L. J. Q. B. 61; 22 Q. B. D. 70). A mortgagee may, of course, distrain for rent due under a lease or agreement made by himself after the mortgage, though in a case not within the Conveyancing Act, 1881, he may not do so in the case of a lease or agreement made by the mortgagor after the mortgage, unless he has accepted rent from the tenant, or given him notice to pay rent and the tenant has acquiesced: *Rogers* v. *Humphreys* (5 L. J. K. B. 65; 4 A. & E. 299). The word "landlord," according to the definition in sect. 57, would include the mortgagee in these cases.

"Ordinary course of dealing."

(2) On many estates it is not usual to demand the rent till a quarter or half-year after it becomes due. If, for instance, it is the practice of the landlord to hold his rent-audit at Christmas for the Michaelmas rents, that would no doubt be held to be sufficient evidence of the "ordinary course of dealing." It was held in a case within sect. 44 of the Act of 1883 (which is reproduced in this section) that a landlord may distrain for rent legally

due at the time of the distress, but not yet payable "according to the ordinary course of dealing," and also for rent which has become due more than a year previously, but has become payable "according to the ordinary course of dealing" less than a year previously, although the total amount distrained for may thus exceed one year's rent: *Re Bew, Ex parte Bull* (56 L. J. Q. B. 270; 18 Q. B. D. 642).

After bankruptcy of the tenant the landlord may only distrain upon the goods or effects of the bankrupt for six months' rent accrued due prior to the date of the order for adjudication. See Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 35.

Limitation of distress in respect of things to be distrained.

35.—(1) Where live stock[1] belonging to another person has been taken in by the tenant of a holding to be fed at a fair price,[2] the stock shall not be distrained by the landlord for rent where there is other sufficient distress to be found, and, if so distrained by reason of other sufficient distress not being found, there shall not be recovered by that distress a sum exceeding the amount of the price agreed to be paid for the feeding, or any part thereof which remains unpaid.

(2) The owner of the stock may, at any time before it is sold, redeem the stock by paying to the distrainer a sum equal to such amount as aforesaid, and any payment so made to the distrainer shall be in full discharge as against the tenant of any sum of the like amount which would be otherwise due from the owner of the stock to the tenant in respect of the price of feeding.

(3) Any portion of the stock so long as it remains on the holding shall continue liable to be distrained for the amount for which the whole of the stock is distrainable.[3]

(4) Agricultural or other machinery which is the property of a person other than the tenant, and is on the holding under an agreement with the tenant for the hire or use thereof in the conduct of his business, and live stock which is the property of a person other than the tenant and is on the holding solely for breeding purposes, shall not be distrained for rent.[4]

(1) See interpretation clause, sect. 57, *post*, p. 122.

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"At a fair price."

(2) The words "at a fair price" will exclude cases where there is an absence of *bona fides*. The equivalent for which the live stock are agisted need not necessarily be money. In *London and Yorkshire Bank* v. *Belton* (54 L. J. Q. B. 568; 15 Q. B. D. 457), cows were agisted on the terms "milk for meat," *i.e.*, that the cows should feed on the farm, and the farmer should have their milk in return for the pasturage; and it was held that the agistment was within the corresponding sect. 45 of the Act of 1883, and that they were privileged from distress. In *Masters* v. *Green* (20 Q. B. D. 807) the tenant allowed the owner of certain cattle the exclusive right to feed the "grass on the land for four weeks" in consideration of 2*l*. The Court held that they were not "taken in to be fed at a fair price," the payment being in the nature of rent for use and occupation, and not for agistment at all. In *Re James, Ex parte Swansea Mercantile Bank* (24 T. L. R. 15) it was held that the taking in of stock for agistment on a farm is a well-known custom, so that stock on a farm are not to be considered within the order and disposition of a bankrupt farmer with the consent of the true owner, even though in fact there is no agistment. As to the liability of an agister for the safe custody of cattle sent to him for agistment, see *Coldman* v. *Hill* (88 L. J. K. B. 491; (1919) 1 K. B. 443).

(3) If the person who has agisted his stock at a certain price withdraws a portion of such stock before the price payable by agreement for the agistment has actually been paid, the landlord may distrain upon the stock still remaining for the whole of the price thus unpaid, although some of such price is in respect of the stock withdrawn.

Exceptions from distress.

(4) Previously to the Act of 1883, the principal exceptions from distress for rent in the case of agricultural tenancies were fixtures, things in actual use, beasts of the plough, and tools of trade; the two latter being liable to distress if there should not be other sufficient distress. To this list has been added (a) machinery on the premises of the tenant under a *bonâ fide* agreement for hire in the conduct of his business; (b) live stock of all kinds which is the *bonâ fide* property of a person other than the tenant, and is on the tenant's premises solely for breeding purposes; (c) live stock agisted with the tenant at a fair price. In the latter case, however, if there is no other sufficient distress, the landlord may distrain for a sum not exceeding the amount agreed to be paid for the feeding, and then unpaid, and the transaction must be a *bonâ fide* agistment. See *Masters* v. *Green* (20 Q. B. D. 807).

The old law was that cattle upon land by way of agistment might be distrained for rent, though in *Miles* v. *Furber* (42 L. J. Q. B. 41; L. R. 8 Q. B. 77) Mellor, J., doubted if it would apply if it were shown that a person exercised the trade of agisting cattle. See Rolle, Abr. 669; Cro. Eliz. 549; Dixon, p. 556; Woodfall, p. 560.

Remedy for wrongful distress.

36.—(1) Where any dispute arises—

(*a*) in respect of any distress having been levied on a holding contrary to the provisions of this Act; or

(*b*) as to the ownership of any live stock distrained, or as to the price to be paid for the feeding of that stock; or

(*c*) as to any other matter or thing relating to a distress on a holding;[1]

the dispute may be heard and determined by the county court or by a court of summary jurisdiction,[2] and any such court may make an order for restoration of any live stock or things unlawfully distrained, or may declare the price agreed to be paid for feeding, or may make any other order[3] which justice requires.

(2) Any such dispute shall be deemed to be a matter in which a court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts;[4] but any person aggrieved by any decision of a court of summary jurisdiction under this section may appeal to a court of quarter sessions.[5]

Scope of the section.

(1) The operation of sub-clause (c) is very wide, and includes all disputes as to illegal or excessive distress which were formerly subjects of an action in the High Court of Justice; but see note (3), *infra*.

(2) It is to be observed that this section is permissive, and does not exclude the jurisdiction of the High Court, so that a person aggrieved may still bring an action for illegal distress if he think fit. Sect. 54 saves all present rights of a landlord or tenant not expressly excluded by the Act.

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(3) The words "or may make any other order" might enable magistrates to award damages. Such an order would not seem to be quite outside their jurisdiction, as they have already power of enforcing certain civil debts; but it is not known that damages in a case of distress have ever been awarded under this section by a Court of Summary Jurisdiction, and it would not seem a suitable tribunal to deal with a claim for damages. See Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 6 and 7. In *Lowe* v. *Dorling* (74 L. J. K. B. 794; (1905) 2 K. B. 501), a case under the Lodgers' Goods Protection Act, 1871, which gives justices jurisdiction in case of lodgers whose goods are seized under a distress, Lord Alverstone, C.J., said: "In my opinion, the words 'or otherwise' cannot possibly be held to give the magistrates power to make anyone pay damages for the illegal distress."

Procedure before a Court of Summary Jurisdiction or County Court.

(4) The matter will be brought before the Court of Summary Jurisdiction by a complaint made by the person aggrieved, followed by a summons issued thereupon. A complaint must be made within six months of the time when the matter of such complaint arose: *Morant* v. *Taylor* (45 L. J. M. C. 78; 1 Ex. D. 188). The mode of making and enforcing summary orders by the justices other than for the payment of money is laid down in the Summary Jurisdiction Act, 1879, s. 34. The person making default may be ordered to pay a sum not exceeding 1*l.* for every day he is in default, or may be imprisoned till he has remedied his default.

If the dispute is to be settled by a County Court, the procedure laid down in the County Court Rules, Ord. XL. r. 8, must be adopted. See this rule, *post*, p. 181.

Procedure on appeal to Quarter Sessions.

(5) The procedure on appeal to a Court of General or Quarter Sessions is regulated by the Summary Jurisdiction Act, 1879, s. 31. Notice in writing of the intention to appeal must be given to the other party, and to the clerk of the Court of Summary Jurisdiction within seven days after the day on which the decision of the Court (of Summary Jurisdiction) was given. Such notice must contain a statement of the general grounds of the appeal (sub-sect. 2). The appeal is to the next practicable Court of General or Quarter Sessions having jurisdiction in the county, borough, or place for which the Court of Summary Jurisdiction acted, and holden not less than fifteen days after the day on which the decision was given, upon which the order was founded (sub-sect. 1). The notice required by sub-sect. 2 must be in writing, and may be transmitted as a registered letter by the post (sub-sect. 7).

The right to appeal to the High Court from the decision of a County Court under this section is not excluded by the express power given to appeal to the Court of Quarter Sessions from the decision of a Court of Summary Jurisdiction: *Hanmer* v. *King* (57 L. T. Rep. 507).

Set-off of compensation against rent.

37. Where the compensation for disturbance or for any improvement due under this Act or any enactment repealed by this Act, or under custom or agreement, to a tenant of a holding has been ascertained before the landlord distrains for rent, the amount of the compensation may be set off against the rent, and the landlord shall not be entitled to distrain for more than the balance.

Persons under Disability, Trustees, &c.

Appointment of guardian.

38. Where a landlord or a tenant is an infant without a guardian, or is of unsound mind, not so found by inquisition, the County Court on the application of any person interested may appoint a guardian of the infant or person of unsound mind for the purposes of this Act, and may revoke the appointment and appoint another guardian if and as occasion requires.[1]

(1) See County Court Rules, Ord. XL. r. 1, *post*, p. 172.

Provisions respecting married women. 45 & 46 Vict. c. 75.

39. Where a woman married before the commencement of the Married Women's Property Act, 1882,[1] is entitled to land, her title to which accrued before that commencement, then—

(*a*) if she is entitled to the land for her separate use and is not restrained from anticipation, she shall, for the purposes of this Act, be in respect of the land as if she were a *feme sole*;[1] and

(*b*) in any other case[2] her husband's concurrence shall be requisite, and she shall for the purposes of this Act be examined apart from him by the County Court, or by the judge of the County

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Court for the place where she is, touching her knowledge of the nature and effect of the intended act, and it shall be ascertained that she is acting freely and voluntarily.

The Married Women's Property Act, 1882.

(1) A married woman, by the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), is, from the commencement of that Act (1st January, 1883), capable of acquiring, holding, and disposing by will or otherwise, of any real or personal property, as if she were a *feme sole* (sect. 1, sub-sect. 1), and every woman marrying after the commencement of the Act is entitled to have and to hold, as her separate property, and to dispose of in manner aforesaid, all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage (sect. 2). And every woman married before the commencement of the Act is entitled to have and to hold, and to dispose of in manner aforesaid as her separate property, all real and personal property, her title to which accrues after the commencement of the Act (sect. 5).

(2) "Any other case," &c. includes the case of any woman, married before the commencement of the Act of 1882, entitled to land not for her separate use, or, if for her separate use, with a restraint upon anticipation. If restrained from anticipation, the Court, if it thinks it for her benefit, may, under sect. 39 of the Conveyancing Act, 1881, bind her interest in any property notwithstanding the restraint.

Provision as to limited owners.

40. Subject to the provisions of this Act in relation to Crown, Duchy, Ecclesiastical, and Charity lands, a landlord of a holding, whatever may be his estate or interest in the holding, may give any consent, make any agreement, or do or have done to him any act in relation to improvements in respect of which compensation is payable under this Act, which he might give or make or do or have done to him if he were owner in fee simple, or, if his interest is an interest in a leasehold, were absolutely entitled to that leasehold.[1]

(1) This is an important section giving full powers of consent to improvements by life tenants and other limited owners.

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Recovery of compensation, &c., from trustee.

41. Where any sum agreed or awarded to be paid for compensation, or any sum awarded under this Act to be paid by a landlord, is due from a landlord entitled to receive the rents and profits of the holding otherwise than for his own benefit, whether as trustee or in any other character, the sum due shall be charged and recovered as follows and not otherwise (that is to say):—

(i) The amount so due shall not be recoverable personally against the landlord, nor shall he be under any liability to pay that amount, but it shall be a charge on and recoverable against the holding only;

(ii) The landlord shall, either before or after having paid to the tenant the amount due to him, be entitled to obtain from the Minister a charge on the holding to the amount of the sum which is required to be paid or which has been paid, as the case may be, to the tenant;[1]

(iii) If the landlord neglects or fails to pay to the tenant the amount due to him for one month after it has become due, the tenant shall be entitled to obtain from the Minister a charge on the holding to the amount of the sum due to him, and of all costs properly incurred by him in obtaining the charge;

(iv) Charges under this section shall be made in like manner as other charges under this Act.[2]

Trustee obtaining a charge.

(1) As the charge under this section (which differs in this respect from sect. 20) may be obtained before the money is actually paid, money may be obtained from a land improvement company without any actual advance by the landlord. The section also enables a trustee to take a charge in his own favour, which he may transfer to a land company or other mortgagee on their advancing the money.

Where under this sub-section a landlord trustee has first obtained a charge he may advance moneys belonging to the trust for payment of the compensation. Such an investment of trust money, being on real security, is authorised by the Trustee Act,

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1893, s. 1. See also sect. 5, sub-sect. 1, of the same Act, which provides that any charge made under the Improvement of Land Act, 1864, or a mortgage of any charge, shall be an authorised security for trustees having power to invest money on real security, unless expressly forbidden by the trust.

In *Bennett* v. *Stone* (71 L. J. Ch. 60; (1902) 1 Ch. 226) there was an agreement for sale of real estate the completion of which was delayed for some time. A sum paid by the vendors to an outgoing tenant for tenant right pending completion was allowed to the vendors as a necessary disbursement.

(2) A charge under this section in order to be valid as against a purchaser for value of the land must be registered under the Land Charges Registration and Searches Act, 1888. See sect. 20.

Estimation of best rent.

42. In estimating the best rent, or reservation in the nature of rent, of a holding for the purposes of any Act of Parliament, deed, or other instrument, authorising a lease to be made, provided that the best rent, or reservation in the nature of rent, is reserved, it shall not be necessary to take into account against the tenant any increase in the value of the holding arising from any improvements made or paid for by the tenant.[1]

Application of the section.

(1) This section applies to cases where a lease is granted to a tenant who has made or paid for improvements under this Act, and where the landlord, instead of paying compensation, agrees to allow the tenant to hold at a rent which does not include the value of the improvements. A landlord who under Act of Parliament, deed, or otherwise is bound to let at the best rent (*e.g.*, a tenant for life acting under the Settled Land Act, 1882, s. 7, sub-s. 2) is thus empowered to compensate the tenant for his improvement by a rent below the full value of the land. See sect. 6 as to the right of a tenant in respect of improvement purchased from an outgoing tenant.

Crown and Duchy Lands.

Application to Crown lands.

43.—(1) This Act shall apply to land belonging to His Majesty in right of the Crown.

(2) With respect to any such land, for the purposes of this Act, the Commissioners of Woods, or other the

proper officer or body having charge of the land for the time being, or, in case there is no such officer or body, then such person as His Majesty may appoint in writing under the Royal Sign Manual, shall represent His Majesty, and shall be deemed to be the landlord.

(3) The power given to the Treasury by section one of the Crown Lands Act, 1866 (being a power to direct the cost of certain improvements to be charged to capital and repaid out of income), shall extend to any compensation under this Act payable by the Commissioners of Woods in respect of an improvement comprised in Part I. or Part II. of the First Schedule to this Act. 29 & 30 Vict. c. 62.

(4) Any compensation under this Act payable by those Commissioners, in respect of an improvement comprised in Part III. of the First Schedule hereto, shall be paid as part of the expenses of the management of the Land Revenues of the Crown.

Application to land of Duchy of Lancaster.

44.—(1) This Act shall apply to land belonging to His Majesty in right of the Duchy of Lancaster.

(2) With respect to any such land for the purposes of this Act, the Chancellor of the Duchy shall represent His Majesty, and shall be deemed to be the landlord.

(3) The amount of any compensation under this Act payable by the Chancellor of the Duchy in respect of an improvement comprised in Part I. or Part II. of the First Schedule to this Act shall be raised and paid as an expense incurred in improvement of land belonging to His Majesty in right of the Duchy within section twenty-five of the Act of the fifty-seventh year of King George the Third, chapter ninety-seven.

(4) The amount of any compensation under this Act payable by the Chancellor of the Duchy in respect of an improvement comprised in Part III. of the First Schedule to this Act shall be paid out of the annual revenues of the Duchy.

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Application to land of Duchy of Cornwall.

45.—(1) This Act shall apply to land belonging to the Duchy of Cornwall.

(2) With respect to any such land, for the purposes of this Act, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints, shall represent the Duke of Cornwall or other the possessor aforesaid, and be deemed to be the landlord, and may do any act or thing under this Act which a landlord is authorised or required to do thereunder.

(3) Any compensation under this Act payable by the Duke of Cornwall, or other the possessor aforesaid, in respect of an improvement comprised in Part I. or Part II. of the First Schedule to this Act, shall be paid, and advances therefor made, in the manner and subject to the provisions of section eight of the Duchy of Cornwall Management Act, 1863, with respect to improvements of land mentioned in that section.

26 & 27 Vict. c. 49.

Ecclesiastical and Charity Lands.

Application to ecclesiastical land.

46.—(1) Where lands are assigned or secured as the endowment of a see, the powers by this Act conferred on a landlord in respect of charging land shall not be exercised by the bishop in respect of those lands, except with the previous approval in writing of the Estates Committee of the Ecclesiastical Commissioners.

(2) Where a landlord is incumbent of an ecclesiastical benefice, the powers by this Act conferred on a landlord in respect of charging land shall not be exercised by him in respect of the glebe land or other land belonging to the benefice, except with the previous approval in writing of the patron of the benefice, that is, the person or authority who, in case the benefice were vacant, would be entitled to present thereto, or of Queen Anne's Bounty.

(3) Queen Anne's Bounty may, if they think fit, on behalf of the incumbent, out of any money in their hands,

pay to the tenant the amount of compensation due to him in respect of any improvement comprised in the First Schedule to this Act; and thereupon they may, instead of the incumbent, obtain from the Minister a charge on the holding in respect thereof in favour of themselves, and every such charge shall be effectual notwithstanding any change of the incumbent. §§46-48.

Application to charity land

47. The powers by this Act conferred on a landlord in respect of charging land shall not be exercised by trustees for ecclesiastical or charitable purposes, except with the approval in writing of the Charity Commissioners or the Board of Education, as the case may require.

Special Provisions as to Market Gardens.

Special provisions as to market gardens.

48.[1]—(1) In the case of a holding in respect of which it is agreed by an agreement in writing made on or after the first day of January, eighteen hundred and ninety-six, that the holding shall be let or treated as a market garden—

(i) the provisions of this Act shall apply as if the improvements comprised in the Third Schedule to this Act were comprised in Part III. of the First Schedule to this Act:[2]

Provided that—

(*a*) in the case of Crown lands, compensation in respect of an improvement comprised in paragraphs (1), (2) and (5) of the said Third Schedule shall be paid in the same manner and out of the same funds as if it were an improvement comprised in Part I. of the said First Schedule; and

(*b*) in the case of Duchy lands, compensation in respect of any improvement comprised in the said Third Schedule shall be paid in the same manner and out of the

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same funds as if it were comprised in Part I. of the said First Schedule;

(*c*) the right of an incoming tenant to claim compensation in respect of the whole or part of an improvement which he has purchased may be exercised although his landlord has not consented in writing to the purchase:[3]

(ii) The provisions of this Act relating to tenants' property in fixtures and buildings shall extend to every fixture or building affixed or erected by the tenant to or upon the holding, or acquired by him since the thirty-first day of December, nineteen hundred, for the purposes of his trade or business as a market gardener:[4]

(iii) It shall be lawful for the tenant to remove all fruit trees and fruit bushes planted by him on the holding and not permanently set out;[5] but if the tenant does not remove such fruit trees and fruit bushes before the termination of his tenancy, they shall remain the property of the landlord, and the tenant shall not be entitled to any compensation in respect thereof.

(2) Where under a contract of tenancy current on the first day of January, eighteen hundred and ninety-six, a holding was at that date in use or cultivation as a market garden with the knowledge of the landlord, and the tenant thereof had then executed thereon, without having received previously to the execution thereof any written notice of dissent by the landlord, any improvement comprised in the Third Schedule to this Act, the provisions of this section shall apply, in respect of that holding, as if it had been agreed in writing after that date that the holding should be let or treated as a market garden, so however that the improvements in respect of which compensation is payable under those provisions as

so applied shall include improvements executed before as well as improvements executed after that date.[6]

(3) Where the land to which such agreement relates, or so used and cultivated, consists of part of a holding only, this section shall apply as if that part were a separate holding.

(1) This section repeats sect. 42 of the Agricultural Holdings Act, 1908, except a proviso to sub-sect. 2, which has been repealed, as mentioned below.

Tenancies affected by the section.

(2) In the case of a holding not in use or cultivation as a market garden on January 1st, 1896 (the commencement of the Market Gardeners' Compensation Act, 1895), in order that the tenant may reap the benefits of this sub-section, it is necessary that there should be an agreement in writing made on or after that date, that the holding shall "be let or treated as a market garden," or a direction must have been obtained under sect. 49 of this Act that this section either in respect of all the improvements comprised in the Third Schedule or in respect of some only of those improvements shall apply to the holding or part of the holding. In the case of a lease or tenancy agreement to comply with this section it is probably sufficient that the holding should be described in terms which show an intention that it shall be treated as a market garden. It is not necessary that the whole of the land demised should be so let or treated; it is sufficient if by agreement in writing a part of it is cultivated "wholly or mainly" for the purpose or trade or business of market gardening (see sub-sect. 3 of this section). In such a case the section will apply to that part. See *Callander* v. *Smith* (37 Sc. L. R. 890; 2 Fraser, 1140). Where the holding is not so let or treated originally, in order that the section may operate, the tenant must obtain a supplemental agreement from his landlord allowing him so to treat it. The word "treated" in the phrase "shall be let or treated as a market garden" does not mean simply that the holding shall be in use or cultivation as a market garden. It means that it shall be let by one person as landlord and occupied by the other as tenant as a market garden. The section has been held not to apply in case of a holding which was in fact used and cultivated as a market garden but where the tenancy agreement contained a proviso "that nothing herein contained shall be deemed to be an agreement by the landlord that the premises hereby demised or any part thereof shall be let or treated as a

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market garden." See *Re Masters and Duveen* (93 L. J. K. B. 57; (1923) 2 K. B. 729).

Form 19 may be used if it is desired to avoid the liability to compensate for fruit trees or fruit bushes. As to the meaning of the words "market garden" see note 4 to sect. 57 (*post*, p. 127).

The manager of an estate has, in the absence of any limitation of his authority, power to bind the landlord by an agreement with the tenant that the latter may be at liberty to change the cultivation of an estate from agricultural land to that of a market garden: *Re Pearson and I'Anson* (68 L. J. Q. B. 878; (1899) 2 Q. B. 618).

Even if the consent of the landlord is not obtained, the conversion of arable and pasture land into a market garden and the erection of glass-houses thereon does not constitute a breach of a covenant to cultivate the farm "in a good and husbandlike manner according to the best rules of husbandry practised in the neighbourhood": *Meux* v. *Cobley* (61 L. J. Ch. 449; (1892) 2 Ch. 253).

Rights of incoming tenant who has paid for improvement.

(3) Sect. 7 of this Act gives the right to an incoming tenant who, "with the consent in writing of his landlord," has paid compensation for an improvement to an outgoing tenant "under or in pursuance of" the Act, to claim against the landlord on quitting his holding in respect of that improvement. This right can, under the present section, be obtained by payment to an outgoing tenant, *without* the consent of the landlord in the case of improvements on land agreed to be let or treated as a market garden.

Fixtures.

(4) The result of this sub-section is that any fixture or building affixed or erected by the tenant, or acquired by him since December 31st, 1900 (immediately after which the Act of 1900 came into operation), "for the purposes of his trade or business of a market gardener," is removable by the tenant "before or within a reasonable time after the termination of the tenancy" upon one month's notice in writing to the landlord, who will have an option of purchasing at a fair value. The tenant thus has an alternative right in respect of such buildings and fixtures. He may either claim compensation under item 5 of the Third Schedule to this Act, or he may assert his right to remove. In the latter case the landlord may elect to purchase under sect. 22, sub-sect. 1 (v). See sect. 22, and the notes thereto, *ante*, p. 75.

Removal of trees and shrubs.

(5) Apart from the powers conferred by this Act, trees and shrubs planted would not be removable by the tenant unless they were planted by a nurseryman for the purposes of his trade and

are not too aged for transplanting, *i.e.*, "not permanently set out": *Wardell* v. *Usher* (3 Scott, N. R. 508). The ploughing up of strawberry beds out of the ordinary course of management has been held to be waste, although the tenant may have paid for them in a valuation when he entered: *Watherell* v. *Howells* (1 Camp. 227).

Construction of section.

(6) This sub-section, which has taken the place of sect. 4 of the Market Gardeners' Compensation Act, 1895, places a tenant under a contract of tenancy current at the commencement of that Act of 1895 (January 1st, 1896) in a better position as regards compensation than one whose tenancy commenced after that date. In order to be able to claim compensation, a tenant under such a current tenancy has only to show that he has then (*i.e.*, on January 1st, 1896) executed some one of the improvements in respect of which the Act gives him a right to compensation or removal without any written dissent by his landlord, and that his holding is at that date, *to the knowledge of his landlord*, cultivated as a market garden, and he at once, without the necessity of obtaining any consent from his landlord to its future cultivation in that way, such as is required by the previous sub-section in the case of a tenancy commenced after January 1st, 1896, becomes entitled to claim compensation under the provisions of the Act for any improvement executed by him after the commencement of the Act.

The correct interpretation of sect. 4 of the Act of 1895, which was not by itself clear, was shown by the Scottish case of *Smith* v. *Callander* (70 L. J. P. C. 53; (1901) A. C. 297), in which the House of Lords affirming a decision of the Court of Session, who had to deal with the corresponding section in the Market Gardeners' Compensation (Scotland) Act, 1897, held that the section did not entitle a tenant, under a lease current at the commencement of the Act, to claim compensation in respect of market garden improvements executed prior to the commencement of the Act, but they considered that he was entitled to claim in respect of improvements executed after the commencement of the Act on the condition that he "had then executed thereon" improvements without having received from the landlord written notice of dissent. The House were of opinion that the word "then" meant "thereupon" or "thereafter." The result, therefore, was that the tenant, by executing improvements, obtained the right to claim compensation under the Act, but the claim could only be properly made in respect of improvements executed after the commencement of the Act. In *Mears* v. *Callender*

§ 48. (70 L. J. Ch. 621; (1901) 2 Ch. 388) Cozens-Hardy, J., followed the above decision of the House of Lords in an English case.

The effect of this decision was annulled by the Agricultural Holdings Act, 1906, s. 5, as from 1st January, 1909, when the Act was to have come into operation, and the words of the present sub-section, "so however that," &c., are intended to effect the same object—that is to say, to make the operation of the sub-section retrospective as regards the holdings with which it deals, and enables the tenant who comes within it to obtain compensation for improvements carried out (*e.g.*, the planting of fruit trees) before January 1st, 1896, as well as after that date.

In *Taylor* v. *Steel-Maitland* (50 Sc. L. R. 395; (1913) S. C. 562) it was held in Scotland (Lord Johnston dissenting) that when a tenant annually kept 50 acres (part of a farm of 150 acres), but not always the same 50 acres, under cultivation as a market garden, the fact that the ground cultivated as a market garden varied from time to time did not prevent the 50 acres under such cultivation at the expiry of the lease from being a market garden within sect. 29 of the Agricultural Holdings (Scotland) Act, 1908 (corresponding with this section) for the purpose of a claim for compensation for improvements. It was also held in the same case that a "notice of dissent" by the landlord to the execution of an improvement under sect. 29, sub-sect. 2 (sect. 48, sub-sect. 2, of this Act), might be given after January 1st, 1898 (January 1st, 1896, under this Act), so as to disentitle the tenant to compensation. The word "then" in the sentence "and the tenant thereof has *then* executed thereon" was held in the same case to mean "thereafter," following the opinion expressed by the House of Lords in *Smith* v. *Callander* (70 L. J. P. C. 53; (1901) A. C. 297). The word "had," which has now been substituted for "has" in this sub-section, appears to preclude this construction. It would appear therefore that under sect. 48, sub-sect. 2, a tenant holding under a contract of tenancy current on January 1st, 1896, has a right to compensation for the improvements mentioned in the Third Schedule if the holding was in use or cultivation as a market garden on January 1st, 1896, with the knowledge of the landlord, and if the tenant *before* that date without written notice of dissent by the landlord had executed thereon any improvement comprised in the Third Schedule. The improvements in respect of which he may obtain compensation are by the express words of the sub-section not confined to those executed after January 1st, 1896, but include those executed (*e.g.*, fruit trees planted) before as well as after

that date. But land is not "in use or cultivation as a market garden" within the meaning of the sub-section if it has merely been ploughed by the tenant with the intention of preparing the land for use as a market garden and if such ploughing would have been equally suitable for ordinary agricultural purposes: *Re Morse and Dixon* (87 L. J. K. B. 1).

Sect. 42, sub-sect. 2, of the Act of 1908 originally contained a proviso intended to preserve the respective rights of landlord and tenant in respect of yearly tenancies which were current on 1st January, 1896 (the commencement of the Market Gardeners' Compensation Act, 1895), as they would have been under the previous Acts if this Act had not been passed. What those rights were was decided in *Re Kedwell and Flint & Co.* (80 L. J. K. B. 707; (1911) 1 K. B. 797), and that decision led to the passing in 1913 of an Act (2 & 3 Geo. 5, c. 21) which repealed the proviso.

Further provision as to market gardens.

49.—(1) Subject to the provisions of this section, where a tenant desires to make on his holding or any part of his holding any improvement comprised in the Third Schedule to this Act and the landlord refuses, or within a reasonable time fails, to agree in writing that the holding or that part of the holding shall be treated as a market garden, the agricultural committee for the area in which the holding is situate may, on the application of the tenant and after hearing the landlord or his representative, and after being satisfied that the holding or part of the holding is suitable for the purposes of market gardening, direct that the last preceding section of this Act shall, either in respect of all the improvements comprised in the said Third Schedule or in respect of some only of those improvements, apply to the holding or to that part thereof, and the said section shall apply accordingly as respects any improvements executed after the date on which the direction is given:[1]

Provided that nothing in this sub-section shall authorise the breaking up of meadow land or pasture.

Any direction given by an agricultural committee under this sub-section shall be subject to such conditions, if any, for the protection of the landlord, as the com-

§ 49. mittee may think fit to attach to the direction, and, where any such direction is given, the following provisions shall have effect:—

(*a*) If the tenancy is terminated by notice to quit given by the tenant or by reason of the tenant becoming bankrupt or compounding with his creditors, the tenant shall not be entitled to compensation in respect of any such improvements as are specified in the direction unless the tenant not later than one month after the date on which the notice to quit is given or the date of the bankruptcy or composition, as the case may be, or such later date as may be agreed, produces to the landlord an offer in writing by a substantial and otherwise suitable person (being an offer which is to hold good for a period of three months from the date on which it is produced), to accept a tenancy of the holding from the termination of the existing tenancy thereof, and on the terms and conditions of that tenancy so far as applicable, and, subject as hereinafter provided, to pay to the outgoing tenant all compensation payable under this Act or under the contract of tenancy, and the landlord fails to accept the offer within three months after the production thereof; and

(*b*) If the landlord accepts any such offer, the incoming tenant shall pay to the landlord on demand all sums payable to him by the outgoing tenant on the termination of the tenancy in respect of rent or breach of contract or otherwise in respect of the holding, and any amount so paid may, subject to any agreement between the outgoing tenant and incoming tenant, be deducted by the incoming tenant from any compensation payable by him to the outgoing tenant;[2] and

(*c*) If the direction relates to part only of the holding the direction may, on the application of the landlord, be given subject to the condition that the tenant shall consent to the division of the holding into two parts (one such part being the part to which the direction relates) to be held at rents agreed by the landlord and tenant or in default of agreement settled by the committee, but otherwise on the same terms and conditions as the original holding, so far as applicable.

(2) A new tenancy created by the acceptance of a tenant in accordance with the provisions of this section on the terms and conditions of the existing tenancy shall not be deemed to be a new tenancy for the purposes of the provisions of this Act relating to demands for arbitration as to rent.[3]

(3) The powers under this section of an agricultural committee may, in the case of a holding situate in a county borough for which an agricultural committee has not been appointed, be exercised by the Minister.

(4) In the exercise of their powers under this section the agricultural committee and the Minister shall have regard to the likelihood of the land being required for any purpose other than agriculture.[4]

(5) If in any case a landlord or tenant by notice in writing given to the other party shall so require, the powers which under this section may be exercised by a committee shall in that case be exercised by an arbitrator appointed and acting under and in accordance with the provisions of this Act.

(6) Where any agreement in writing secures to the tenant of a holding for any improvement to which the provisions of the last preceding section of this Act apply, or are directed under this section to apply, fair and reasonable compensation, having regard to the circum-

§ 49. stances existing at the time of making the agreement, the compensation so secured shall, as respects that improvement, be substituted for compensation under this Act.[5]

(1) This sub-section enables the county agricultural committee on the application of a tenant in respect of all or part of a holding, "after being satisfied that the holding or part of the holding is suitable for the purposes of market gardening," to direct that either in respect of all or some of the improvements comprised in the Third Schedule to the Act, sect. 48 shall apply to the holding or that part of it, that is to say, the provisions of the Act will apply as if the improvements covered by the direction were comprised in Part III. of the First Schedule to the Act, and the tenant will be able to obtain compensation on quitting for such improvements made by him without his landlord's consent, and will have the right of removal given by sub-sect. 1 of sect. 48. This is what it is presumed is intended, though the direction "that the last preceding section of this Act shall . . . apply" is not a very accurate way of putting it, because the section provides that an agreement in writing that the holding shall be let or treated as a market garden is a necessary condition (except in cases of contracts of tenancy current on January 1, 1896) to the right to compensation for the improvements comprised in the Third Schedule.

Evesham Custom.

(2) The latter part of this sub-section applies what is known as the "Evesham Custom," where direction has been given that sect. 48 shall apply and the tenancy is terminated by notice to quit from the tenant or by reason of his being bankrupt or compounding with his creditors. The effect, shortly, is that the tenant is able to obtain his compensation from some person "being a substantial and otherwise suitable person" willing to take on a tenancy of the holding on the terms of the existing tenancy, *i.e.*, to buy the existing tenant's interest, unless the landlord fails to accept the proposed new tenant.

If notice to quit is given by the landlord, unless it is for any of the reasons excepted by sub-sect. 1 of sect. 12 or unless the right to compensation for disturbance is excluded under sub-sect. 7 of that section, the tenant will not only be entitled to compensation for his market garden improvements, but also to compensation for disturbance. This heavy liability of the landlord should tend to give the tenant practical fixity of tenure.

(3) See sect. 12, sub-sect. 4, which excludes from the provisions of that section relating to demands for arbitration as to the rent to be paid for a holding, demands so made that the increase or reduction would take effect at some time before the expiration of two years from the commencement of the tenancy. This sub-section provides that the acceptance of a tenant under this section shall not be deemed to be the commencement of a new tenancy so as to preclude a demand for arbitration as to the rent to take effect within two years thereafter.

(4) This sub-section is no doubt intended to prevent land being made the subject of heavy market garden compensation if it is likely to be shortly required to be taken for building or other industrial purpose.

Substituted compensation.

(5) Sect. 4 of the Act (*ante*, p. 30) restricts the right of substituting "fair and reasonable" compensation by agreement for compensation under the Act in respect of the improvements comprised in Part III. of the First Schedule, to cases where the agreement for substituted compensation was made before January 1, 1921. This sub-section excepts from this restriction improvements comprised in the Third Schedule where the tenant would be entitled to compensation for such improvements by virtue of sect. 48. Therefore in respect of the market garden improvements mentioned in the Third Schedule there may still be a valid agreement in writing as to the compensation payable which, if "fair and reasonable" in the opinion of the arbitrator, will be substituted for compensation ascertained by arbitration under the Act. See sect. 16, sub-sect. 3.

Supplemental Provisions.

Avoidance of contract inconsistent with Act.

50. Subject to the provisions of this Act, any contract (whether under seal or not) made by a tenant of a holding, by virtue of which his right to claim compensation under this Act is taken away or limited, shall to that extent be void.[1]

(1) This section replaces sect. 55 of the Act of 1883 and sect. 5 of the Act of 1908, and makes the operation of the Act compulsory as respects the tenant's right to compensation in the case of all tenancies to which the Act applies.

The Act does not apply to a tenant holding land for a less period than one year (see the definitions of "contract of tenancy" and

§ 50.

"tenant" in sect. 57), *e.g.*, under a letting of pasture land for the summer months, and it has been suggested that the compulsory effect of the Act may be avoided by means of an agreement for a half-yearly or quarterly letting, determinable by notice at the end of any half-year or quarter; but a letting "at the rent of 19*l.* 12*s.* a year payable quarterly on the four usual quarter-days for payment of rent in every year" is a tenancy from year to year, and therefore within the Act, notwithstanding that it is provided that it may be determined by a three months' notice to quit on any day of the year: *King* v. *Eversfield* (66 L. J. Q. B. 809; (1897) 2 Q. B. 475). See also *Lewis* v. *Baker* (75 L. J. K. B. 848; (1906) 2 K. B. 599).

Other methods suggested for excluding the tenant's right to compensation for improvements under the Act are a reservation of penal rents for improvements executed without the landlord's consent, and a covenant not to execute any improvements without the landlord's consent; but it is doubtful if either of these expedients would be valid under this section. It has also been suggested that a higher rent might be reserved during the last two or three years of a term, reducible to the normal rent on the execution in each year by the tenant of improvements of a certain value within the third part of the schedule, in which case the amount to be taken off from the rent could be deducted from the amount payable for compensation, as being a "benefit allowed in consideration of the tenant executing the improvement." See sect. 1, sub-sect. 2 (*a*).

Another suggested mode of excluding the Act altogether is by a letting for a year less one day, to be renewed for a like period at the expiration of each period of 364 days; but the inconveniences of such an arrangement are likely to preclude its adoption except in very exceptional cases.

The Act may also be expressly excluded by agreement in a contract of tenancy which comprises "non-statutory land" in addition to agricultural land. (See sect. 33, *ante*, p. 92.)

The effect of the corresponding section (sect. 55) of the Act of 1883 was considered by Stirling, L.J., in *Re Smith and Duke of Devonshire* (22 T. L. R. 619), and it was pointed out that the section did not prohibit the landlord or tenant from entering into covenants or agreements which would prevent the tenant from claiming, or induce him not to claim, compensation under the Act, but that the Act of 1900, by sect. 1, sub-sect. 5 (sect. 1, sub-sect. 3, of the present Act), recognized the validity of agreements for compensation in lieu of compensation under the Acts then in force. In that case, however, it was held that a fixed sum

specified in a lease of a market garden, made in 1888, as compensation for the exercise by the lessor of a power reserved to him by the lease of resuming possession of any part of the land on giving six calendar months' notice to the lessee, did not deprive the lessee of the right to claim compensation in respect of fruit trees permanently set out on the land subsequently to January 1, 1896, when the Market Gardeners' Compensation Act, 1895, came into operation, under the provisions of which he claimed.

In *Brown* v. *Mitchell* ((1910), Sess. Cas. 369) it was held in Scotland that a schedule to a lease providing compensation for unexhausted manures, the rates of which were not challenged as being otherwise than "fair and reasonable" within sect. 4, was not void under this section because, after specifying the compensation to be paid for lime, crushed bones and bone meal and dissolved bones, bone phosphate, guano and police manure, it provided that other artificial manures should be considered exhausted by the first crop and give no right to compensation. In *Cathcart* v. *Chalmers* (80 L. J. P. C. 143; (1911) A. C. 246) it was held by the House of Lords that a clause in a lease by which it was provided that an agricultural tenant should make no claim under the Act for improvements "later than one month prior to the determination of the tenancy" was void, as being inconsistent with the provisions of the Act by which he was entitled to make the claim at any time before the determination of the tenancy. Such a provision tended to deprive him of his right to claim compensation under the Act.

Exclusion of certiorari.

51. An order of the county court or of a court of summary jurisdiction under this Act shall not be quashed for want of form, or be removed by certiorari or otherwise into any superior court.[1]

(1) Under words in the Prevention of Cruelty to Animals Act, 1849 (12 & 13 Vict. c. 92), s. 26, similar to those in this section, it was held that the Court of Queen's Bench was precluded from entertaining a case stated by justices for the opinion of the Court: *Reg.* v. *Chantrell* (14 L. J. M. C. 94; L. R. 10 Q. B. 587); but see the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 19), s. 40.

Costs in county court.

52.—(1) The costs of proceedings in the county court under this Act shall be in the discretion of the court.

§§52-54. (2) The Lord Chancellor may prescribe scales of costs for those proceedings, and of costs to be taxed by the registrar of the court.[1]

(1) See Order of the Lord Chancellor as to costs, *post*, p. 169.

Service of notice, &c.

53. Any notice, request, demand, or other instrument under this Act may be served on the person to whom it is to be given either personally or by leaving it for him at his last known place of abode in England, or by sending it through the post in a registered letter addressed to him there; and in the case of a notice to a landlord "the person to whom it is to be given" shall include any agent of the landlord duly authorised in that behalf.[1]

(1) This section applies to notices to quit as well as to other notices in the case of tenancies to which the Act applies. Consequently any such notice to quit will be properly served if sent through the post in a registered letter addressed to the person to whom it is to be given at his last known place of abode in England: *Van Grutten* v. *Trevenen* (71 L. J. K. B. 544; (1902) 2 K. B. 82).

It is to be noted that the agent of the landlord "duly authorised in that behalf" is included in the expression "the person to whom it is to be given." The question of authority to receive notices to quit would be one of fact in each case, but probably an estate agent appointed by a landlord to manage his property, and deal with his tenants generally, would be inferred to have authority to receive and give notices.

General saving of rights.

54. Except as in this Act expressed, nothing in this Act shall prejudicially affect any power, right, or remedy of a landlord, tenant, or other person vested in or exerciseable by him by virtue of any other Act or law, or under any custom of the country, or otherwise, in respect of a contract of tenancy or other contract, or of any improvements, deteriorations, waste, emblements, tillages, away-going crops, fixtures, tax, rate, tithe rent-charge, rent, or other thing.[1]

(1) This section is very wide in preserving the common law

rights and powers and remedies of landlord and tenant, and may be taken to qualify the comprehensive terms of sect. 16 (see *ante*, p. 65).

Improvements executed under repealed enactments. 8 Edw. 7. c. 28.

55. The compensation in respect of an improvement made before the first day of January, nineteen hundred and nine (being the date of the commencement of the Agricultural Holdings Act, 1908), or made upon a holding held under a contract of tenancy, other than a tenancy from year to year, current on the first day of January, eighteen hundred and eighty-four,[1] shall be such (if any) as could have been claimed if this Act had had not been passed, but the procedure for the ascertainment and recovery thereof shall be such as is provided by this Act, and the amount so ascertained shall be payable, recoverable, and chargeable as if it were compensation under this Act.

(1) The 1st January, 1884, was the date of the commencement of the Agricultural Holdings (England) Act, 1883. There are probably few (if any) contracts of tenancy of agricultural land then current still subsisting.

Special provisions as to holdings being allotments. 12 & 13 Geo. 5, c. 51.

56.—(1) Nothing in this Act shall affect the operation of the Allotments Act, 1922, save that sub-section (6) of section twenty-two of that Act shall cease to have effect.[1]

(2) In the case of any holding to which this Act applies consisting of a parcel of land, whether attached to a cottage or not, of not more than two acres in extent held by a tenant under a landlord and cultivated as a farm or garden, or partly as a garden and partly as a farm, this Act shall have effect as if the provisions of section six of the Allotments Act, 1922, as to determination and recovery of compensation were substituted for the provisions of this Act as to the determination and recovery of compensation.[2]

(1) The Allotments Act, 1922, provides for the termination of tenancies of "allotment gardens," such a garden being defined

§ 56. as meaning "an allotment not exceeding forty poles in extent which is wholly or mainly cultivated by the occupier for the production of vegetable or fruit crops for consumption by himself or his family," and the Act also provides for compensation on quitting to tenants of allotment gardens and allotments. "Allotment" is defined as meaning "any parcel of land, whether attached to a cottage or not, if not more than two acres in extent, held by a tenant under a landlord and cultivated as a farm or a garden, or partly as a garden and partly as a farm," being the same words as are used in sub-sect. 2 of this section. In the case of "allotments" which come within the definition of "holding" in sect. 57, sub-sect. 1, of this Act, a claim for compensation may be made under sect. 3 of the Allotments Act, 1922, or under this Act, but not under both. Sub-sect. 6 of sect. 22, which is by this sub-section to cease to have effect, excludes from the operation of the Agricultural Land Sales (Restriction of Notices to Quit) Act, 1919, which is now repealed, any allotment garden or any land cultivated as a garden unless it is cultivated wholly or mainly for the purpose of the trade or business of market garden. The excluded land would not fall within the operation of sect. 26 of the present Act, which has taken the place of the Agricultural Land Sales (Restriction of Notices to Quit) Act, 1919 (*ante*, p. 82).

(2) Sect. 6 of the Allotments Act, 1922, the provisions of which are by this sub-section to be substituted in the case of allotments in respect of which a claim for compensation is made under this Act for the provisions as to determination and recovery of compensation contained in this Act, is as follows:—

"6.—(1) The compensation under the foregoing provisions of this Act, and such further compensation (if any) as is recoverable under the contract of tenancy, shall, in default of agreement, be determined by a valuation made by a person appointed in default of agreement by the judge of the County Court having jurisdiction in the place where the land is situated, on an application in writing being made for the purpose by the landlord or tenant, and if not paid within fourteen days after the amount is agreed or determined, shall be recoverable upon order made by the County Court as money ordered to be paid by a County Court under its ordinary jurisdiction is recoverable.

"(2) The proper charges of the valuer for the valuation shall be borne by the landlord and tenant in such proportion as the valuer shall direct, but be recoverable by the valuer from either of the parties, and any amount paid by either of the parties in

excess of the amount (if any) directed by the valuer to be borne by him shall be recoverable from the other party and may be deducted from any compensation payable to such party." §§56, 57.

57.—(1) In this Act, unless the context otherwise requires,— Interpretation.

"Contract of tenancy" means a letting of or agreement for letting land for a term of years, or for lives, or for lives and years, or from year to year:[1]

"Termination" in relation to any tenancy means the cesser of the contract of tenancy by reason of effluxion of time, or from any other cause:

"Landlord" means any person for the time being entitled to receive the rents and profits of any land:[2]

"Tenant" means the holder of land under a contract of tenancy, and includes the executors, administrators, assigns, guardian, committee of the estate, or trustee in bankruptcy, of a tenant, or other person deriving title from a tenant:

"Holding" does not include an allotment garden or include any land cultivated as a garden unless it is cultivated wholly or mainly for the purpose of the trade or business of market gardening, but, except as aforesaid, means any parcel of land held by a tenant, which is either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, or in whole or in part cultivated as a market garden, and which is not let to the tenant during his continuance in any office, appointment, or employment held under the landlord:[3]

"Allotment garden" means an allotment not exceeding forty poles in extent which is wholly or mainly cultivated by the occupier for the production of vegetable or fruit crops for consumption by himself or his family:

§ 57.

"Market garden" means a holding cultivated, wholly or mainly, for the purpose of the trade or business of market gardening:[4]

"County court," in relation to a holding, means the county court within the district whereof the holding, or the larger part thereof, is situate:

"Live stock" includes any animal capable of being distrained:

"Manuring" means any of the improvements numbered twenty-five, twenty-six, and twenty-seven in Part III. of the First Schedule to this Act:

"Agreement" includes an agreement arrived at by means of valuation or otherwise, and "agreed" has a corresponding meaning:[5]

"The Minister" means the Minister of Agriculture and Fisheries:

"Agricultural committee" means the agricultural committee established for a county or borough under the Ministry of Agriculture and Fisheries Act, 1919, or, where the powers of an agricultural committee with respect to the matter in question have been delegated to a sub-committee, that sub-committee:[6]

9 & 10 Geo. 5, c. 91.

"Rules of good husbandry"[7] means (due regard being had to the character of the holding) so far as is practicable having regard to its character and position—

(*a*) the maintenance of the land (whether arable, meadow, or pasture), clean and in a good state of cultivation and fertility, and in good condition; and

(*b*) the maintenance and clearing of drains, embankments, and ditches; and

(*c*) the maintenance and proper repair of fences, stone walls, gates, and hedges; and

(*d*) the execution of repairs to buildings, being repairs which are necessary for the proper cultiva-

tion and working of the land on which they are to be executed; and

(*e*) such rules of good husbandry as are generally recognised as applying to holdings of the same character and in the same neighbourhood as the holding in respect of which the expression is to be applied:

Provided that the foregoing definition shall not imply an obligation on the part of any person to maintain or clear drains, embankments, or ditches, if and so far as the execution of the works required is rendered impossible (except at prohibitive or unreasonable expense) by reason of subsidence of any land or the blocking of outfalls which are not under the control of that person, or in its application to land in the occupation of a tenant imply an obligation on the part of the tenant—

(i) to maintain or clear drains, embankments, or ditches, or to maintain or properly repair fences, stone walls, gates, or hedges where such work is not required to be done by him under his contract of tenancy;[8] or

(ii) to execute repairs to buildings which are not required to be executed by him under his contract of tenancy.[8]

(2) The designations of landlord and tenant shall continue to apply to the parties until the conclusion of any proceedings taken under or in pursuance of this Act in respect of compensation.[9]

(3) References to the terms, conditions, or requirements of a contract of tenancy of or of an agreement relating to a holding shall be construed as including references to any obligations, conditions, or liabilities implied by the custom of the country in respect of the holding.

§ 57. (4) Unless or until a tenant of a holding shall have received notice that the person theretofore entitled to receive the rents and profits of the holding (hereinafter referred to as "the original landlord") has ceased to be so entitled, and also notice of the name and address of the person who has become entitled to receive such rents and profits, any notice, request, demand or other instrument which the tenant shall serve upon or deliver to the original landlord shall be deemed to have been served upon or delivered to the landlord of such holding.[10]

Tenancy from year to year.

(1) A tenant from year to year is one who holds under a demise (express or implied) for a term which may be determined at the end of the first or any subsequent year either by the landlord or tenant by a notice to quit: Dixon, p. 455; Woodfall, p. 271. It may be created by a general letting at a yearly rent without any limitation as to time.

An agreement to let at a yearly rent payable quarterly determinable on any day of the year by three calendar months' notice to quit, will create a tenancy from year to year: *King* v. *Eversfield* (66 L. J. Q. B. 809; (1897) 2 Q. B. 475); *Dixon* v. *Bradford & District, &c. Co.* (73 L. J. K. B. 136; (1904) 1 K. B. 444); *Lewis* v. *Baker* (75 L. J. K. B. 848; (1906) 2 K. B. 599).

In *Lockhart* v. *Osborn* (36 Sol. J. 365) it was held in a County Court by H.H. Judge Bagshawe that the Act applies in the case of a tenancy for one year certain as being included in the expression "a term of years."

Who is a "landlord."

(2) "Landlord" will include a mortgagee in possession. By sect. 15, a mortgagee who deprives the occupier of possession is liable to compensate him for his crops and expenditure.

In *Mansel* v. *Norton* (52 L. J. Ch. 357; 22 Ch. D. 769), an owner in fee demised a farm for seven years, and agreed, at the expiration of the term, to pay for the tenant's property on the farm at a valuation. He devised the land to trustees for a term of 1,000 years, upon trust to raise money in aid of his personal estate, and subject thereto to the plaintiff for life, with divers remainders over. On the testator's death the plaintiff took possession. On the expiration of the term a new tenant could not be found. The plaintiff paid the outgoing tenant for his property on the farm, and claimed to be repaid out of the testator's estate. It was held that the landlord for the time being was the person primarily liable, and that the plaintiff (being in receipt of the

rents and profits) was the landlord, and not the trustee of the term, and that he therefore was the person primarily liable, and had no claim to be repaid wholly or in part out of the testator's estate or by the persons entitled in remainder. In *Riddell's Executors* v. *Milligan's Executors* ((1909) S. C. 1137) it was held in Scotland that the executors of a lessor whose estate was entailed were under a lease containing an obligation to take over the sheep stock at the termination of the lease "by the proprietor or incoming tenant" bound to take over the sheep stock. See also *Gardiner's* v. *Stewart's Trustees* ((1908) S. C. 985). In *Bath* v. *Bowles* (93 L. T. 80) it was held that the executors of a lessor were not liable to pay compensation for unexhausted improvements in respect of land resumed under a proviso for that purpose where the lessor had sold the land and the notice to resume possession of part of the land was given by the purchasers.

In *Bradshaw* v. *Bird* (90 L. J. K. B. 221; (1920) 3 K. B. 144) it was held that by virtue of the definition in this clause the compensation for disturbance payable under the now repealed Agricultural Holdings Act, 1914, where a tenancy had been terminated by notice to quit in view of the sale of the holding, was to be paid by the person entitled to receive the rents and profits of the land when the tenancy in fact terminated and not by the landlord who gave the notice to quit. And, following that case, in *Dale* v. *Hatfield Chase Corporation* (92 L. J. K. B. 237; (1922) 2 K. B. 282), where landlords gave due notice to quit and afterwards sold the holding to three separate purchasers who completed their purchases before the expiration of the notice to quit, it was held that the purchasers, being entitled to the rents and profits of the holding on the termination of the tenancy, were the "landlords" within the meaning of this section, and were therefore the persons liable to pay the tenant any sum of money which might be awarded to him for compensation. It was also held in the same case that the notice of claim for compensation given by the tenant to the original landlord would enure for his benefit against the purchasers. Under sub-sect. 2 of this section, when proceedings for compensation are commenced, the designation of landlord and tenant will continue to apply to the parties so designated at the commencement until the conclusion of the proceedings. See note (9), *infra*.

What is an "agricultural holding."

(3) There is no definition in the Act of what is to be considered an "agricultural" holding. In the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), s. 9, "agricultural land" is defined as meaning "any land used as arable, meadow, or pasture ground only, cottage gardens exceeding one quarter of an acre, market

§ 57. gardens, nursery grounds, orchards, or allotments, but does not include land occupied together with a house as a park, gardens, other than as aforesaid, pleasure-grounds, or any land kept or preserved mainly or exclusively for purposes of sport or recreation, or land used as a racecourse." It is submitted that the meaning in this Act would not extend to cottage gardens or nursery grounds. The occupier of a market garden covered with glass-houses was, in *Smith* v. *Richmond* (68 L. J. Q. B. 898; (1899) A. C. 448), held not to be an occupier of agricultural land within the Agricultural Rates Act, 1896, and therefore not entitled to the exemption from rates conferred by that Act, which was intended to be given to land only, and not to land covered with buildings. But it would seem that land covered with buildings such as glass-houses for market gardening purposes would be entitled to the benefit of this Act as a market garden. In *Gilchrist* v. *Assessor for Lanarkshire* (25 Rettie, 589, 591) Lord Stormonth-Darling said: "There are three methods of utilising the soil, which are expressed by the terms 'agriculture,' 'horticulture,' and 'forestry.' These three things are entirely distinguishable, and any one of them is not to be held as including any other without special provision to that effect." In *Inland Revenue Commissioners* v. *Ransom* (88 L. J. K. B. 342; (1918) 2 K. B. 709) it was held that the growing of medicinal herbs might come under the term "husbandry." An "allotment garden," which is defined *ante*, p. 120, is excluded from the definition.

In *Mackintosh* v. *Lovat* (*Lord*) (14 Rettie, 252) it was held in Scotland that the Act did not apply to the case of an hotel and 30 acres of land let as one subject, and in *Taylor* v. *Moray* (*Earl*) (19 Rettie, 399), also in Scotland, it was held not to apply to three-quarters of an acre of land, one-third being occupied as a dwelling-house and garden, and the remainder as a grass park. In *Re Lancaster and Macnamara* (87 L. J. K. B. 1250; (1918) 2 K. B. 472) an inn was demised together with 86 acres of pastoral land, upon which were certain barns and other outbuildings, at a rental of 171*l.* per annum. The inn was rated at 32*l.*, and the rest of the land demised at 102*l.* 15*s.* It was held that the property so demised was not an "agricultural holding," and that the word "holding" could not under this definition be read as if it applied to every separate parcel of land included in a demise so as to bring agricultural or pastoral land included in a letting with other property within the scope of the Act and enable a tenant thereof to obtain compensation thereunder. But the effect of this decision has now been to some extent removed by sect. 33,

which extends the meaning of the word "holding." The mere fact that the farmhouse of a large farm has for a time been let by the tenant with the approval of the landlord for the purpose of taking paying guests does not prevent the farm from being a holding within the definition in this section: *Re Russell and Harding's Arbitration* (128 L. T. 476). See also *Re Sampson and Horsfall* (10 L. J. County Courts Rep. 90).

Meaning of "market garden."

(4) This sub-section defines the meaning of a "market garden," but it leaves unexplained the expression "the trade or business of market gardening."

In *Cooper* v. *Pearse* (65 L. J. M. C. 95; (1896) 1 Q. B. 562) a garden is defined by Collins, J., as "a place where fruit and vegetables are grown for food, or a place laid out for pleasure," and in *Purser* v. *Worthing Local Board* (56 L. J. M. C. 78; 18 Q. B. D. 818) a piece of land, on which were built 16 greenhouses or glass-houses which practically covered the surface of the land and were used for growing vegetables and fruit for sale, was held to constitute a "market garden or nursery ground" within sect. 211, sub-sect. 1, of the Public Health Act, 1875. Probably "market gardening" may be taken to mean "the growing for sale of garden produce, whether fruit, flowers, or culinary vegetables," as distinguished from farm produce. It is submitted that a farmer who *occasionally* grows a market garden crop, *e.g.*, cabbages or carrots, and sells the same for consumption as garden produce, does not come within the Act having regard to the words "wholly or mainly," nor does a person in possession of a garden who occasionally sells surplus garden produce. See *Re Hammond* (14 L. J. Bk. 14; De G. 93), where a farmer, who was in the habit of growing in open fields a quantity of peas and young potatoes as a fallow crop and sending them to London for sale, was held not to be a market gardener within the Bankruptcy Act, 1842 (5 & 6 Vict. c. 122), s. 10. It is not necessary, however, that the whole of the holding should be cultivated as a market garden. In *Bickerdike* v. *Lucy* (89 L. J. K. B. 559; (1920) 1 K. B. 707) a person employed in a private garden, some of the surplus produce of which was sold, was held not to be employed in a "market garden." See also *Re Wallis, Ex parte Sully* (14 Q. B. D. 950).

The Act will apply if and so far as part of the holding is "wholly or mainly" so cultivated, *e.g.*, a farmer who devotes part of his farm to the growing of fruit, flowers, or culinary vegetables for sale, if his landlord agrees in writing to his so treating it, may claim compensation under the Act. See *Callander*

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v. *Smith* (37 Sc. L. R. 890; 2 Fraser, 1140), where it was held by Lord Kyllachy and acquiesced in by the Court of Session that in the construction of the Act the term "holding" includes "part of a holding," and consequently that the Market Gardeners Compensation (Scotland) Act, 1897, applied where part of a farm, held under an ordinary agricultural lease, had been cultivated as a market garden prior to the commencement of that Act.

A fruit farm, it is submitted, is a "market garden" within the meaning of the Act, but not so an orchard attached to a farm and used for the production of fruit mainly for domestic consumption or cider making, although fruit may occasionally be sold off.

(5) Notwithstanding the provisions referring all questions to arbitration contained in sects. 5 and 16 of this Act, practically in most cases where a change of tenancy takes place, and claims for tillages, acts of husbandry and compensation have to be settled as between the landlord or incoming tenant and the outgoing tenant, the mode of procedure under this Act does not differ greatly from what it was before the Act, when it was usual to appoint a valuer or arbitrator on each side, who appointed an umpire to decide in case they differed. Each party usually finds it convenient to appoint a valuer to act on his behalf, and if on going into the various claims the two valuers, being properly authorised by their principals, mutually agree as to figures, the result will be an "agreement" arrived at by means of a valuation under this definition, and the principals will be bound, and no further arbitration will be necessary.

(6) The Ministry of Agriculture and Fisheries Act, 1919 (9 & 10 Geo. 5, c. 91), by sect. 7 provides that the council of every county (other than the London County Council) shall and the London County Council and the council of any county borough may establish an agricultural committee constituted in accordance with a scheme made by the council and approved by the Ministry. Any scheme must provide (*a*) for the appointment by the council of at least a majority of the agricultural committee, who shall be members of the council, unless, in the case of a county, the council otherwise determine, (*b*) for the appointment by the Ministry of not more than one-third of the members of the agricultural committee and of any sub-committee to which powers of the agricultural committee are delegated, and (*c*) for the inclusion of women as well as men among the members of the agricultural committee.

(7) The "rules of good husbandry" enumerated in this section

are of great importance and are referred to on several points in the Act. Under sect. 12, sub-sect. 1, if a notice to quit is given by the landlord in consequence of the tenant's failure to observe the rules of good husbandry, no compensation for disturbance is payable, and under sub-sect. 2 a certificate given by the county agricultural committee that the tenant is not cultivating according to these rules is conclusive on the point. Failure by a tenant to cultivate according to the rules gives the landlord the right to compensation for the deterioration of the holding on the termination of the tenancy under sect. 10.

(8) It is to be observed that where the terms of a contract of tenancy are referred to, the obligations implied by the custom of the country are included: see sub-sect. 3.

(9) It was held in *Dale* v. *Hatfield Chase Corporation* (92 L. J. K. B. 237; (1922) 2 K. B. 282) that the appointment of an arbitrator to deal with claims arising under the Act is the commencement of "proceedings" within the meaning of this subsection, and not the notice by the claimant of his intention to claim compensation.

(10) This sub-section was not in the Act as originally passed, but was passed as sect. 1 of the Agriculture (Amendment) Act, 1923 (13 & 14 Geo. 5, c. 25), and by sect. 2, sub-sect. 3, of that Act it was enacted that the said sect. 1 should be inserted in sect. 57 of this Act as sub-sect. 4 thereof, and that the King's printer should print all copies of this Act printed after its commencement with the insertion. It was passed presumably in consequence of remarks of Bankes, L.J., in *Dale* v. *Hatfield Chase Corporation* (*supra*).

Commencement, short title, and repeal.

58.—(1) This Act shall come into operation at the expiration of one month after the passing thereof.

(2) This Act may be cited as the Agricultural Holdings Act, 1923.

(3) The enactments mentioned in the Fourth Schedule to this Act are hereby repealed to the extent specified in the Third Column of that Schedule:

Provided that (without prejudice to the general application of section thirty-eight of the Interpretation Act, 1889,[1] with respect to the effect of repeals):—

52 & 53 Vict. c. 63.

(*a*) all orders, regulations, rules, appointments, scales of costs, charges, directions, certificates, and

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instruments made or issued and notices and consents given and having effect under any enactment hereby repealed shall have effect as if they had been made or given under this Act; and

(*b*) references in any conveyance, lease, or other document to any enactment so repealed shall have effect as if they had been references to corresponding provisions of this Act.

(1) As to the effect of the Interpretation Act, 1869, in keeping alive rights accrued under sect. 11 of the Agricultural Holdings Act, 1908, after its repeal by the Agriculture Act, 1920, see *Hamilton Gell* v. *White* (91 L. J. K. B. 875; (1922) 2 K. B. 422).

SCHEDULES.

FIRST SCHEDULE.

Sch. I.

Sects, 1, 2, 3, 4, 5, 9, 20, 21, 30, 43, 44, 45, 46, 48, 57.
1908 1st Sch.
1920 1st Sch.

Part I.

Improvements to which Consent of Landlord is required.

(1) Erection, alteration, or enlargement of buildings.

(2) Formation of silos.

(3) Laying down of permanent pasture.

(4) Making and planting of osier beds.

(5) Making of water meadows or works of irrigation.

(6) Making of gardens.

(7) Making or improvement of roads or bridges.

(8) Making or improvement of watercourses, ponds, wells, or reservoirs, or of works for the application of water power or for supply of water for agricultural or domestic purposes.

(9) Making or removal of permanent fences.

(10) Planting of hops.

(11) Planting of orchards or fruit bushes.

(12) Protecting young fruit trees.

(13) Reclaiming of waste land.

(14) Warping or weiring of land.

(15) Embankments and sluices against floods.

(16) Erection of wirework in hop gardens.

(17) Provision of permanent sheep-dipping accommodation.

(18) In the case of arable land the removal of bracken, gorse, tree roots, boulders or other like obstructions to cultivation.

[N.B.—*This part is subject as to market gardens to the provisions of the Third Schedule.*]

Part II.

Improvement in respect of which Notice to Landlord is required.

(19) Drainage.

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PART III.

IMPROVEMENTS IN RESPECT OF WHICH CONSENT OF OR NOTICE TO LANDLORD IS NOT REQUIRED.

(20) Chalking of land.

(21) Clay-burning.

(22) Claying of land or spreading blaes upon land.

(23) Liming of land.

(24) Marling of land.

(25) Application to land of purchased artificial or other purchased manure.

(26) Consumption on the holding by cattle, sheep, or pigs, or by horses other than those regularly employed on the holding, of corn, cake, or other feeding stuff not produced on the holding.[2]

(27) Consumption on the holding by cattle, sheep, or pigs, or by horses other than those regularly employed on the holding, of corn proved by satisfactory evidence to have been produced and consumed on the holding.[2]

(28) Laying down temporary pasture with clover, grass, lucerne, sain-foin, or other seeds, sown more than two years prior to the termination of the tenancy in so far as the value of the temporary pasture on the holding at the time of quitting exceeds the value of the temporary pasture on the holding at the commencement of the tenancy for which the tenant did not pay compensation.[3]

(29) Repairs to buildings, being buildings necessary for the proper cultivation or working of the holding, other than repairs which the tenant is himself under an obligation to execute:

Provided that the tenant, before beginning to execute any such repairs, shall give to the landlord notice in writing of his intention, together with particulars of such repairs, and shall not execute the repairs unless the landlord fails to execute them within a reasonable time after receiving such notice.[4]

(1) Items 17 and 18 were added by the Agriculture Act, 1920.

(2) It is to be observed that items 26 and 27 do not apply to feeding stuffs or corn consumed by horses "regularly employed on the holding," which, it is presumed, excludes the ordinary

ploughing and carting staff of the farm, but not hunters or nag-horses or breeding stock.

In order to substantiate a claim under item 27 "satisfactory evidence" must be produced, and it will be important that a tenant who may propose to make such a claim should keep an accurate record of corn produced on the holding and consumed as mentioned.

(3) The words "in so far as" down to "pay compensation" were added by the Agriculture Act, 1920, presumably to prevent a tenant obtaining compensation for temporary pasture laid down by him which does not exceed the amount of such pasture which he took over on entry without payment whether or not sown more than two years before that date. See *Galloway* (*Earl*) v. *McClelland* ((1915) S. C. 1062), where the question was raised whether under the Act of 1908 temporary pasture received by the tenant on entry without payment could be set off against his claim for temporary pasture laid down. In order to claim compensation for "laying down" temporary pasture, it is not enough for the tenant to leave temporary pasture which he would have been entitled to break up: *Findlay* v. *Munro* ((1917) S. C. 419).

The actual cost of planting of clover and other "seeds" mentioned in item 28 is very commonly given by the custom of the country to an outgoing tenant, but the right to claim is generally limited to cases where the sowing has taken place not more than one or two years prior to the determination of the tenancy. In *Hamilton-Ogilvy* v. *Elliott* (7 Fraser, 1115) it was held in Scotland that a tenant whose lease determined less than two years from the date of the Agricultural Holdings Act, 1900, which first gave the right to compensation for clover, grass, &c., sown more than two years prior to the determination of the tenancy, was entitled to compensation under that enactment. The question has been raised whether under this item a tenant may obtain compensation for grass originally laid down during his tenancy as temporary pasture which has remained unploughed and gradually acquired the character of permanent pasture before the determination of the tenancy. The character of the herbage would appear not to affect the tenant's right so long as between him and his landlord he is not bound to let it remain as permanent pasture. It is submitted that he can therefore obtain compensation for such pasture under this item, but that the compensation would be assessed on the basis of its value to an incoming tenant, who will deal with it as temporary pasture, and plough it up either at once or in due course. To treat it not so, but as if it were permanent

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pasture would enable a tenant to obtain compensation for permanent pasture laid down without the landlord's consent, notwithstanding that "laying down of permanent pasture" is included in Part I. of this Schedule as being an improvement for which the landlord's consent is required.

(4) The buildings for the repairs of which a claim may be made under item 29 must be, it is to be observed, "buildings necessary for the proper cultivation or working of the holding," which would, it is presumed, include the ordinary barns, stables, cattle-sheds, pig-styes, &c., and probably also the farm-house, but not any buildings which have ceased to be used. Buildings which the tenant by his agreement or lease is himself under an obligation to repair, do not fall within this item at all.

Sects. 16, 17.

SECOND SCHEDULE.

Rules as to Arbitration.

Appointment of Arbitrator.

1. A person agreed upon between the parties, or in default of agreement nominated by the Minister on the application in writing of either of the parties, shall be appointed arbitrator.

2. If a person appointed arbitrator dies, or is incapable of acting, or for seven days after notice from either party requiring him to act fails to act, a new arbitrator may be appointed as if no arbitrator had been appointed.

3. Neither party shall have power to revoke the appointment of the arbitrator without the consent of the other party.

4. Every appointment, notice, revocation, and consent under this part of these rules must be in writing.

5. Such number of persons as may be appointed by the Lord Chief Justice of England shall form a panel of persons from whom any arbitrator nominated, otherwise than by agreement, for the purposes of an arbitration under and in accordance with the provisions of this schedule shall be selected.

The remuneration of an arbitrator so nominated as aforesaid shall be such amount as is fixed by the Minister, and the remuneration of an arbitrator appointed by the parties

to any such arbitration shall, in default of agreement between those parties and the arbitrator, be such amount as on the application of the arbitrator or either of the parties is fixed by the registrar of the county court, subject to appeal to the judge of the court.

The remuneration of an arbitrator when agreed or fixed under this rule shall be recoverable by the arbitrator as a debt due from either of the parties to the arbitration, and any amount paid in respect of the remuneration of the arbitrator by either of those parties in excess of the amount (if any) directed by the award to be paid by him in respect of the costs of the award shall be recoverable from the other party to the arbitration.

An arbitrator nominated otherwise than by agreement for an arbitration relating to a holding in Wales or Monmouthshire shall be a person who possesses a knowledge of Welsh agricultural conditions and, if either party to the arbitration so requires, a knowledge also of the Welsh language.

Time for Award.

6. Except where otherwise expressly provided in this Act, the arbitrator shall make and sign his award within twenty-eight days of his appointment or within such longer period as the Minister may (whether the time for making the award has expired or not) direct.

Removal of Arbitrator.

7. Where an arbitrator has misconducted himself the county court may remove him (*a*).

Evidence.

8. The parties to the arbitration, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrator, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrator all

(*a*) See County Court Rules, Ord. XL. r. 4 (*post*, p. 175), and Forms 418, 419, 420 for procedure on application to remove an arbitrator.

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samples, books, deeds, papers, accounts, writings, and documents, within their possession or power respectively, which may be required or called for, and do all other things which during the proceedings the arbitrator may require.

9. The arbitrator shall have power to administer oaths, and to take the affirmation of parties and witnesses appearing, and witnesses shall, if the arbitrator thinks fit, be examined on oath or affirmation.

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10. The arbitrator may at any stage of the proceedings, and shall if so directed by the judge of the county court (which direction may be given on the application of either party), state in the form of a special case for the opinion of that court any question of law arising in the course of the arbitration (*b*).

Award.

11. The arbitrator shall, on the application of either party, specify the amount awarded in respect of any particular improvement or any particular matter the subject of the award, and the award shall fix a day not later than one month after the delivery of the award for the payment of the money awarded as compensation, costs, or otherwise, and shall be in such form as may be prescribed by the Minister (*c*).

12. The award to be made by the arbitrator shall be final and binding on the parties and the persons claiming under them respectively.

13. The arbitrator may correct in an award any clerical mistake or error arising from any accidental slip or omission.

14. Where an arbitrator has misconducted himself, or an arbitration or award has been improperly procured, the county court may set the award aside (*d*).

(*b*) See Ord. XL. rr. 2, 3 (*post*, pp. 173 and 174), and Forms 415, 416 and 417.

(*c*) Under sect. 17, sub-sect. 2 (*a*) of the Act it is obligatory on the arbitrator to state separately in his award the amounts awarded in respect of the several claims referred. See form of award prescribed by the Minister (*post*, p. 191).

(*d*) See Ord. XL. r. 4 (*post*, p. 175), and Forms 418, 419 and 420.

Costs.

15. The costs of and incidental to the arbitration and award shall be in the discretion of the arbitrator, who may direct to and by whom and in what manner these costs or any part thereof are to be paid, and the costs shall be subject to taxation by the registrar of the county court on the application of either party, but that taxation shall be subject to review by the judge of the county court (*e*).

16. The arbitrator shall, in awarding costs, take into consideration the reasonableness or unreasonableness of the claim of either party, either in respect of amount or otherwise, and any unreasonable demand for particulars or refusal to supply particulars, and generally all the circumstances of the case, and may disallow the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily.

Forms.

17. Any forms for proceedings in arbitrations under this Act which may be prescribed by the Minister shall, if used, be sufficient (*f*).

Powers of Minister of Agriculture.

NOTE ON ARBITRATION UNDER THE ACT.—An arbitration under the Act is partly under the control of the Minister of Agriculture and Fisheries and partly under the control of the County Court. The Minister has power in default of agreement to appoint an arbitrator, to be selected from a panel (see Sched. III. rr. 1, 5). The time for making an award (twenty-eight days from the appointment) may be extended by the Minister, and he has power to prescribe forms for proceedings in arbitrations. See forms prescribed (*post*, p. 191), and also Forms 45, 46, 47.

Powers of County Court.

The County Court may remove an arbitrator for misconduct, or set aside an award for misconduct of the arbitrator or if improperly procured, and may decide any question of law stated in a special case, and may direct the statement of a special case. See Ord. XL. rr. 2, 3 and 4, in Appendix II. If a party to an arbitration *bonâ fide* requests the arbitrator to state a case or to

(*e*) See order as to costs (*post*, p. 169) and Ord. XL. rr. 5, 6 (*post*, p. 179).

(*f*) See Forms prescribed by the Minister (*post*, p. 191).

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Setting aside of an award.

delay making his award until the party can apply to the Court for an order directing a case, and the arbitrator refuses to comply with either request, he is *primâ facie* guilty of misconduct such as would justify the Court in setting aside the award: *Re Palmer & Co. and Hosken & Co.* (67 L. J. Q. B. 1; (1898) 1 Q. B. 131); *Czarnikow* v. *Roth, Schmidt & Co.* (92 L. J. K. B. 81; (1922) 2 K. B. 478). An umpire who refused to state a special case upon a question of law unless a payment of 150*l.* was made to him to cover expenses was held guilty of misconduct: *Re Enoch and Zaretzky* (79 L. J. K. B. 363; (1910) 1 K. B. 327). It is, however, not misconduct on the part of an arbitrator if he is asked to state a case and does not agree to do so, but makes his award without stating a case; if a party wishes to ensure that a case should be stated, he should, if the arbitrator refuses or fails to agree to his application to state a case, apply to the judge of the County Court to compel him to do so: *Slade* v. *Lord Manton's Executors* (1923) (12 L. J. C. C. Rep. 83); *Re Spillers & Baker, Ltd. and Leetham & Sons* (66 L. J. Q. B. 326; (1897) 1 Q. B. 312). An umpire or single arbitrator occupies a judicial position and is bound so far as practicable to follow legal rules: *Re Enoch and Zaretzky* (*supra*). The wrongful admission of evidence on a material point is misconduct which will enable the award to be set aside: *Walford, Baker & Co.* v. *Macfie & Sons* (84 L. J. K. B. 2221). So, too, a refusal to admit material evidence: *Williams* v. *Wallis & Cox* (83 L. J. K. B. 1296; (1914) 2 K. B. 478). In *Re O'Conor and Whitlaw's Arbitration* (1919) (88 L. J. K. B. 1242) an arbitrator, who (1) took evidence in the absence of and without previous notice to the tenant, and (2) in making his award did not deal with a claim as to fixtures which was submitted to him for arbitration under the Act, was held guilty of legal misconduct and his award was set aside. It is misconduct on the part of an arbitrator to hear the evidence of each party in the absence of the other: *Ramsden & Co.* v. *Jacobs* (91 L. J. K. B. 432; (1922) 1 K. B. 640). Ord. XL. r. 4, sub-note 1, of the County Court Rules, which provides that upon an application to set aside an award on the ground of misconduct of the arbitrator, the arbitrator shall be made a party is not *ultra vires: Lendon* v. *Keen* (85 L. J. K. B. 1237; (1916) 1 K. B. 904). If an arbitrator appears and takes part in proceedings to set aside his award, costs can be given against him: *ibid.* When an arbitrator has been guilty of such collusion as would entitle a party to the arbitration to bring an action against him, and the award is set aside on the ground of such misconduct, costs ought to be given against him whether he appears in the

County Court or not. Where, however, an arbitrator appears but takes no active part in the litigation and no suggestion of bad faith or dishonesty is made against him, the County Court judge has no power to award costs against him: *ibid.* An appeal from the decision of a County Court judge on an application to set aside an award lies to the High Court and not to the Court of Appeal: *Williams* v. *Wallis & Cox* (83 L. J. K. B. 1296; (1914) 2 K. B. 478). The Act does not give power to the County Court to set aside an award for error on the face of it, but as it does not oust the inherent jurisdiction of the High Court, that jurisdiction must be deemed to remain. Therefore an application to set aside an award under the Agricultural Holdings Act on the ground of error on the face of it, as distinguished from an error arising from legal misconduct of the arbitrator, lies to the High Court and not to the County Court: *Re Jones and Carter's Arbitration* (91 L. J. Ch. 824; (1922) 2 Ch. 599). This ground for setting aside the award by the High Court is, however, a very narrow ground: *per* Lord Sterndale, M.R., in *Re Jones and Carter's Arbitration* (*supra*). As to what may constitute error in law on the face of the award, see *Champsey Bhara & Co.* v. *Jivraj Balloo Spinning and Weaving Co.* (92 L. J. P. C. 163; (1923) A. C. 480).

Statement of case.

A case may be stated "at any stage of the proceedings." (Rule 10.) It has been questioned if this would enable a case to be stated after the award has been made. It might be argued that the proceedings are not concluded until payment or execution; but this would seem to be inconsistent with the dictum of Lord Halsbury, L.C., in *Tabernacle Permanent Building Society* v. *Knight* (62 L. J. Q. B. 52; (1892) A. C. 302): "I should agree that if a complete award had been made, a statute which gives the Court or a judge power at any stage of the proceedings under a reference to direct a case to be stated would not be applicable where the proceedings had come to an end by a completed award." This dictum was followed in *Re Palmer & Co. and Hosken & Co.* (67 L. J. Q. B. 1; (1898) 1 Q. B. 131); see also *Re Montgomery, Jones & Co. and Liebenthal* ((1898), 78 L. T. 406), and the County Court case of *Lloyd* v. *Phillips* (152 Law Times Newspaper, 104). An appeal from the decision of the County Court judge on a question of law stated in a case lies to the Court of Appeal, from whose decision no appeal will lie. (Sect. 16, sub-sect. 4.)

Evidence and costs.

Evidence may be required by the arbitrator to be given on oath or affirmation, though he is not obliged so to require. He has full power to deal with the costs of and incidental to the arbitration and award, and is not bound by the rules or practice

Sch. II.

of the judges of the High Court. Therefore where the landlord has claimed for dilapidations and is awarded only a small portion of the amount claimed, the arbitrator may award that he shall pay the costs of both parties: *Gray* v. *Ashburton (Lord)* (86 L. J. K. B. 224; (1917) A. C. 26). Under the repealed section (20) relating to costs in the Agricultural Holdings Act, 1883, it was held that there was no power for the arbitrators or umpire to direct one party to pay the costs of the reference as between solicitor and client: *Re Griffiths and Morris* (64 L. J. Q. B. 386; (1895) 1 Q. B. 866). If that decision is correct, it would seem to apply to Rule 14 in this Schedule. The award must be made in the form prescribed by the Ministry of Agriculture and Fisheries. See the rules and forms (*post*, p. 190). It is final and cannot be appealed from. The arbitrator under Rule 8 has power to direct a party to the arbitration to make an affidavit as to documents and to answer interrogatories: *Kursell* v. *Timber Operators and Contractors, Ltd.* (92 L. J. K. B. 607; (1923) 2 K. B. 202).

The arbitrator.

The arbitrator should not be one who has any secret interest in the matter referred, or who may be affected by any circumstance likely to bias his mind unknown to one of the parties: *Earl* v. *Stocker* (2 Vern. 251); *Kimberley* v. *Dick* (41 L. J. Ch. 38; L. R. 13 Eq. 1). If the interest of the arbitrator is known to both parties, they will be taken to have waived it: *Re Elliot and South Devon Ry. Co.* (2 De G. & S. 17). And irregularities in conducting an arbitration may be waived by the parties continuing the arbitration after they have been discovered: *Moseley* v. *Simpson* (42 L. J. Ch. 730; L. R. 16 Eq. 226).

An arbitrator cannot determine the differences between the parties in a way other than that directed by the submission: *Ross* v. *Boads* (7 L. J. Q. B. 209; 8 A. & E. 290). An arbitrator under these Acts will, following this rule, only be empowered to make a money award. An arbitrator who has made his award is at once *functus officio;* and if his award does not embrace the matters really in issue between the parties, he cannot of his own motion treat it as no award and make another: *Re Stringer and Riley Brothers' Arbitration* (70 L. J. Q. B. 19; (1901) 1 Q. B. 105). He can decide as to the existence of a trade custom: *Produce Brokers Co.* v. *Olympia Oil & Cake Co.* (85 L. J. K. B. 160; (1916) 1 A. C. 314). Under Rule 13, an arbitrator can correct clerical mistakes in an award, but he cannot alter an award already made by adding explanatory words: *Sutherland & Co.* v. *Hannevig Brothers* (90 L. J. K. B. 225; (1921) 1 K. B. 336). When an arbitrator makes a mistake merely by omission,

as in making no award as to costs because he has been under a misapprehension that costs followed the event, the award may be remitted to him for reconsideration: *Re Baxters and Midland Railway* (95 L. T. 20). An arbitrator or umpire ought not to state his award in such a way as to deprive the parties of their right to challenge the amount charged by him for his services. He should not, therefore, fix a lump sum as costs, including therein his own and the arbitrators' fees: *Re Gilbert and Wright* (68 J. P. 143). In the absence of evidence to show that the fees charged by arbitrators or umpires are extortionate or unfair and unreasonable, the Court will not interfere with such charges: *Llandrindod Wells Water Co.* v. *Hawksley* (68 J. P. 242). Rule 5 provides for the fixing of an arbitrator's fees by the Minister of Agriculture and Fisheries or the registrar of the County Court.

Stamp duty.

Under the Revenue Act, 1906 (6 Edw. 7, c. 20), s. 9, a uniform duty of 10*s.* is substituted for the duties chargeable under the Stamp Act, 1891, on an award in England specified under that heading in the First Schedule to that Act.

THIRD SCHEDULE.

Sects. 9, 48, 49.

IMPROVEMENTS SUBJECT TO SPECIAL PROVISIONS IN THE CASE OF MARKET GARDENS.

(1) Planting of standard or other fruit trees permanently set out.

(2) Planting of fruit bushes permanently set out.

(3) Planting of strawberry plants.

(4) Planting of asparagus, rhubarb, and other vegetable crops which continue productive for two or more years.

(5) Erection or enlargement of buildings for the purpose of the trade or business of a market gardener.

Sch. IV.

Sect. 58.

FOURTH SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
8 Edw. 7. c. 28.	The Agricultural Holdings Act, 1908.	The whole Act.
2 & 3 Geo. 5, c. 21.	The Agricultural Holdings Act, 1913.	The whole Act.
9 & 10 Geo. 5, c. 63.	The Agricultural Land Sales (Restriction of Notices to Quit) Act, 1919.	The whole Act.
10 & 11 Geo. 5, c. 76.	The Agriculture Act, 1920.	The whole of Part II. of the Act except section eleven; section thirty-three, except the definition of "agricultural committee"; and the First Schedule.
11 & 12 Geo. 5, c. 17.	The Agriculture (Amendment) Act, 1921.	The whole Act.
11 & 12 Geo. 5, c. 48.	The Corn Production Acts (Repeal) Act, 1921.	Section five.
12 & 13 Geo. 5, c. 51.	The Allotments Act, 1922.	Subsection (6) of section twenty-two.

APPENDIX I.

FORMS FOR USE UNDER AGRICULTURAL HOLDINGS ACT, 1923 (*a*).

1. *Consent by Landlord to the making of an Improvement mentioned in Schedule I., Part* 1. Sect. 2.

To C. D. (*tenant*).

I, A. B. (*landlord*), hereby consent to the erection by you in a substantial and workmanlike manner of a brick and tiled cowhouse (*or making any other improvement, as the case may be*) on the farm of, &c., now occupied by you as my tenant.

Dated . (*Signed*) A. B.

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2. *Consent by Agent to the same upon Terms.*

To C. D. (*tenant*).

I, E. F., the duly authorized agent of A. B. (*landlord*), in that behalf, hereby consent on behalf of the said A. B. to your making a road between and , on the farm of, &c., now occupied by you as his tenant, upon the terms that such road shall be in accordance with the plan and specification submitted to me and annexed hereto, and that you shall only be entitled to claim as compensation under the Agricultural Holdings Act, 1923, for the making of such road, the cost of materials to be carted free of charge by you, and one-half the cost of labour employed thereon.

Dated . (*Signed*) E. F. for A. B.

(*a*) See Index of these Forms, *ante*, p. viii.

Forms.

3. *Consent by Landlord to the laying down of a Field in Permanent Pasture by a Yearly Tenant, and Agreement as to Compensation.*

AN AGREEMENT entered into the day of , BETWEEN A. B. (*landlord*), of, &c., of the one part, and C. D. (*tenant*), of, &c., of the other part.

Sect. 2. The said A. B. hereby consents to the laying down in permanent pasture by the said C. D. of the arable field known as Whiteacre, now occupied by the said C. D. as tenant of the said A. B., upon the terms following (that is to say):—

1. The said C. D. hereby agrees to execute the above-mentioned improvement within one year from the date of this agreement in a proper and husbandlike manner. [*Specify, if thought desirable, the cleaning to be done, the proportion of various grass and clover seeds to be sown, and other particulars.*]

2. If the said C. D. shall execute the said improvement within such year as aforesaid, the said A. B., or the incoming tenant who may succeed the said C. D. in the occupation of Whiteacre, will pay to the said C. D. such sums as may be shown by production of vouchers and labour-book to have been expended by the said C. D. in purchasing grass seeds from Messrs. , seedsmen, for such laying down in pasture as aforesaid, and in labour employed for the same purpose, not exceeding £ per acre for cost of seeds, and £ per acre for labour. Provided always that the total sum payable under this agreement shall be subject to a deduction of per cent. for each year or part of a year during which the said C. D. shall continue in occupation of Whiteacre after the 29th day of September, 19 , and so that after the expiration of years from the 29th day of September, 19 , no compensation shall be payable to the said C. D. in respect of the said improvement.

3. The said field shall not be mown before the day of 19 . [*State any provisions for treatment and manuring of the field, &c., after it is laid down which may be thought desirable.*]

4. It is hereby agreed that the compensation hereby provided shall be substituted for and in lieu of any compensation which might otherwise be payable in respect of the said improvement under the Agricultural Holdings Act, 1923. **Forms.**

As WITNESS, the hands of the parties hereto. (*Signed*) A. B.
C. D.

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4. *Notice by Tenant of intention to execute an Improvement mentioned in Schedule I., Part 2.*

To A. B. (*landlord*). Sect. 3.

I, C. D. (*tenant*), hereby give you notice of my intention after two months and not more than three months from the date of this notice to begin to drain and to drain the field known as Whiteacre, and I propose to execute such drainage in the manner specified in the schedule hereto.

Dated . (*Signed*) C. D.

SCHEDULE.

The drains to be laid at a depth of 3 feet with $2\frac{1}{2}$-inch pipes, at intervals of 30 feet, the main drains to be laid with 6-inch pipes and to discharge into the ditch on the south side of the above field, as shown on the plan annexed hereto (*or as the case may be*).

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5. *Agreement as to Terms of Compensation for an Improvement mentioned in Schedule I., Part 2, to be paid to a Tenant holding under a Lease.*

AN AGREEMENT entered into the day of , Sect. 3.
BETWEEN A. B. (*landlord*), of, &c., of the one part, and C. D. (*tenant*), of, &c., farmer, of the other part. IT IS HEREBY AGREED between the parties hereto as follows:—

1. The said C. D. will within one year from the date of this agreement under-drain in a proper and husbandlike manner, and in the manner specified in the schedule hereto, and as shown in the plan annexed hereto, the field known as

Forms. Whiteacre now occupied by the said C. D. as tenant under a lease dated .

2. The said A. B. or the incoming tenant will pay to the said C. D., on his giving up occupation of his farm on the determination of the said lease, one th of the cost of pipes and of labour employed, not exceeding *s.* per rod, in under-draining the said field (such cost to be proved by production of invoices and receipts).

3. The compensation payable under this agreement shall be substituted for and in lieu of any compensation which might otherwise be payable under the Agricultural Holdings Act, 1923, in respect of such drainage.

As witness, &c.

Schedule.

(*To contain particulars of the work to be executed.*)

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6. *Clause to be inserted in Agreement or Lease dispensing with Notice and fixing the Terms of Compensation for an Improvement mentioned in Schedule I., Part 2.*

Sect. 3. It is hereby agreed between the parties hereto that the tenant may under-drain any of the field N^od^ in the Schedule to this agreement (*or* lease), and that the landlord or the incoming tenant will, on the tenant's quitting his holding on the determination of his tenancy, compensate him for his outlay in pipes and labour on any such under-draining done by him upon the said land, by payment according to the following scale:—

For draining done within 5 years previous to the determination of the tenancy.	The full amount of the outlay as certified.
For ditto within 6 years	90 per cent. of such outlay.
For ditto within 7 years ..... (*And so on.*)	80 per cent. of ditto.

Provided always that in order to entitle the tenant to payment the outlay shall be approved and certified in writing

by the landlord or his agent by signature in the schedule hereto annexed (to be affixed on the Lady Day next following such outlay) and the landlord hereby agrees that such signature shall be affixed upon due proof of the said outlay.

And it is hereby further agreed that no notice of his intention to drain need be given by the tenant under sect. 3 of the Agricultural Holdings Act, 1923, and that the compensation payable under this agreement (*or* lease) shall be substituted for and in lieu of compensation under the said Act.

The Schedule above referred to.

Particulars and Date of Completion of Work.	Labour.	Pipes.	Total.	Signature.
	£ *s.* *d.*	£ *s.* *d.*	£ *s.* *d.*	

7. *Request to Landlord to consent to Improvement comprised in Schedule III., with a view in case of refusal to an Application to the County Agricultural Committee for a direction under sect.* 49.

Sect. 49.

To A. B. (*landlord*).

I, C. D. (*tenant*), hereby request you to agree in writing that the fields N^os^ containing acres or thereabouts and being part of Farm now in my occupation as your tenant shall be treated as a market garden as I am desirous of planting the same with fruit trees and fruit bushes (*or making any other improvement comprised in the Third Schedule*), and I shall be obliged if you will signify your consent or your refusal to give the same within days from this date, and in the event of your refusing or failing to give such consent I propose to apply to the agricultural

Forms.

committee for this county for a direction that section 48 of the Agricultural Holdings Act, 1923, shall apply to the said fields.

Dated . (*Signed*) C. D.

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8. *Agreement for Substituted Compensation for Strawberry Plants and Fruit Bushes under Sect.* 49, *Sub-sect.* (6).

The tenant on quitting the holding at the expiration of the tenancy shall be allowed compensation, as hereinafter provided, for all lands planted with strawberries or fruit bushes [with the landlord's previous consent in writing] in lieu of and in substitution for compensation under the Agricultural Holdings Act, 1923, provided that whilst so planted the land shall have been well manured once at least in every two years with twenty-five cartloads of dung or other approved manure per acre, and provided also that the strawberry plants and fruit bushes shall have been properly tended, cleaned, and managed, it being hereby agreed that the sum of £20 per acre shall be taken to be the cost of bringing into cultivation and planting (including the cost of plants and bushes), and that the rate of compensation shall be as follows:—

	For Strawberries.	*For Fruit Bushes.*
If payable during the year of planting from Michaelmas to Michaelmas.	The whole cost of planting and plants.	The whole cost of planting and plants.
If payable during the first year after planting.	Four-fifths of the whole cost.	Ditto.
If payable during the second year after planting.	Three-fifths of the whole cost.	Four-fifths of the whole cost.
If payable during the third year after planting.	Two-fifths of the whole cost.	Three-fifths of the whole cost.
If payable during the fourth year after planting.	Nil.	Two-fifths of the whole cost.
Afterwards	Nil.	The cost of the plants only.

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9. *Demand by Landlord for Arbitration as to the Rent of the Holding.*

Sect. 12, sub-s. 1 (e).

To C. D. (*tenant*).

Sir,—I hereby demand that the question of the rent to be paid as from the day of next (*a*) for Farm in the county of held by you as tenant thereof from me be referred to arbitration under the Agricultural Holdings Act, 1923, and I request that you will on or before the day of next (*b*) (*or* within twenty-one days from this date) signify to me your agreement or refusal to agree to such demand.

Dated . A. B. (*landlord*).

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10. *Demand by Tenant for Arbitration as to the Rent of the Holding.*

Sect. 13, sub-s. 3.

To A. B. (*landlord*).

Sir,—I hereby demand that the question of the rent to be paid as from the day of next (*a*) for Farm in the county of held by me as tenant thereof from you be referred to arbitration under the Agricultural Holdings Act, 1923, and I request that you will on or before the day of next (or within twenty-one days from this date) (*b*) signify to me your agreement or refusal to agree to such demand.

Dated . (*Signed*) C. D. (*tenant*).

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11. *Notice to Landlord of intention to remove Fixture or Building* (*c*).

Sect. 22.

To A. B. (*landlord*).

Take Notice that I intend after one month from this day to remove the milk cooling apparatus erected by me on the farm of, &c., now held by me as your tenant.

Dated . (*Signed*) C. D.

(*a*) The demand for an alteration in rent must be as from the next ensuing date at which the tenancy could have been terminated by notice to quit.

(*b*) The tenant or landlord (as the case may be) must be given a reasonable time to agree to a demand for arbitration as to rent. A period of 21 days is suggested as a reasonable time.

(*c*) This notice must be given at least one month before the removal.

Forms.

12. *Notice to Tenant to quit Part of his Holding.*

Sect. 27.

To C. D. (*tenant*).

I hereby give you notice to quit the field of Whiteacre (being part of the land now held by you as my tenant) on the day of 19 , and require you to deliver up possession of the same field to me on that day—as I intend to resume possession of the said field for the purpose of planting of trees (*or any other improvement specified in sect.* 23 *or in the resumption clause in the contract of tenancy*), and I hereby offer to reduce your rent by the sum of £ from the day above-mentioned on account of the resumption by me of the said field.

Dated . (*Signed*) A. B.

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13. *Notice by Tenant accepting Notice to Quit Part of Holding as Notice for the entire Holding* (*a*).

Sect. 27.

To A. B. (*landlord*).

I have received your notice to me, dated the day of , to quit Whiteacre on the day of , 19 , and I hereby give you notice that I accept the said notice from you as a notice to quit the whole of the farm of, &c., now held by me as your tenant, and I intend to deliver up possession of the same farm on the said day of , 19 .

Dated . (*Signed*) C. D.

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14. *Notice to quit holding by Landlord to Tenant for reason which will disentitle the Tenant to compensation for disturbance.*

Sect. 12, sub-s. 1.

To C. D. (*tenant*).

Sir,—I hereby give you notice to quit and deliver up possession of the farm land and premises situate at in the county of which you hold of me as tenant thereof

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(*a*) Applicable when the notice is given under the powers of sect. 27, but not when it is given under a power in the contract of tenancy.

on the day of next [*or* at the expiration of twelve months from the end of the now current year of your tenancy], the reason for my giving this notice to quit being that you are not cultivating the holding according to the rules of good husbandry [*or state such other reason mentioned in sect.* 12, *sub-sect.* (1), *of the Agricultural Holdings Act,* 1923, *as is applicable*].

Dated . (*Signed*) A. B. (*landlord*).

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15. *Notice by Landlord requiring Tenant to remedy a Breach of a Term of Contract of Tenancy.*

To C. D. (*tenant*).

Sect 12, sub-s. 1 (b).

Take Notice that I require you within [one month (*a*)] from this date to remedy your breach of the following term of your contract of tenancy of Farm, viz. (*mention term of which breach has occurred,* e.g.) to cleanse and scour all ditches, watercourses, open drains, and the outfalls thereof.

Dated . (*Signed*) A. B.

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16. *Notice to Quit by Tenant on refusal of Landlord to agree to Arbitration as to Rent under Sect.* 12, *Sub-sect.* (3).

To A. B. (*landlord*).

I hereby give you notice that it is my intention to give up possession of the farm land and premises known as Farm, situate at in the county of now held by me as your tenant on the [29] day of [September], 19 , [*or* at the expiration of twelve months from the end of the now current year of my tenancy] I give this notice to quit by reason of your refusal [*or* failure] to agree to the demand made by me in writing for arbitration under the Agricultural

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(*a*) A reasonable time must be given to comply with the notice. If not complied with, compensation for disturbance may be avoided in a notice to quit.

Forms. Holdings Act, 1923, as to the rent to be paid for the holding as from this day of , 19 (*b*).

Dated . (*Signed*) C. D. (*tenant*).

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17. *Notice by Tenant requiring question as to Cultivation according to the rules of good husbandry to be referred to arbitration* (*c*).

Sect. 12, sub-s. 2. To the Agricultural Committee for the county of , and to A. B. (*landlord*).

I, C. D., the tenant of Farm in this county, require that the question as to whether the said holding is being cultivated according to the rules of good husbandry to be referred to an arbitrator.

Dated . (*Signed*) C. D.

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18. *Notice by Landlord to terminate Tenancy upon expiration of a term of years* (*d*).

Sect. 23. To C. D. (*tenant*).

Sir,—Take notice that I intend to terminate the tenancy of Farm in the county of held by you for a term of 21 years from the day of , 19 , under an Indenture of Lease dated the day of , and made between (*name parties*) on the expiration of the said term on the day of next, and I require you to quit and deliver up possession of the said farm accordingly.

Dated . (*Signed*) A. B. (*landlord*).

(*b*) The arbitration demanded must be as to the rent to be paid from the next ensuing date at which the tenancy could have been terminated by notice to quit given by the tenant at the date of the demand. See Form 10, *ante*.

(*c*) Notice to be given within seven days after the notification of grant of a certificate as to cultivation by the Committee. The Act does not say on whom the notice is to be served, and it will be safer to serve it both on the Agricultural Committee and the other party.

(*d*) To be given not less than one year, nor more than two years before the date fixed for the expiration of the term.

19. *Clause to be inserted in Lease of Market Garden to avoid Liability to compensate for Fruit Trees and Fruit Bushes.*

IT IS HEREBY AGREED that such part only of the premises hereby demised as shall, at the determination of the tenancy hereby created, be planted with strawberry plants, asparagus, rhubarb, or other vegetable crops which continue productive for two or more years (without fruit trees or fruit bushes), is let and shall be treated as a market garden, to the intent that the tenant may be entitled, at the determination of the tenancy, on quitting his holding, to obtain from the landlord compensation in respect of such part only of the said premises under the provisions of the Agricultural Holdings Act, 1923, s. 48.

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20. *Clause allowing removal of permanent Market Garden Crops but negativing right to treat as a Market Garden.*

Any asparagus, rhubarb, or other perennial crop, or any fruit bushes planted by the tenant, may be removed by the tenant at or before the termination of the tenancy, he making good and replacing the surface soil disturbed by such removal: Provided always that the landlord or his incoming tenant may elect by notice in writing not less than one month before the termination of the tenancy to take any such plants or bushes by valuation; Provided also and it is hereby agreed and declared that nothing herein contained shall be deemed to be a consent by the landlord within the meaning of the Agricultural Holdings Act, 1923, to an improvement by the making of any garden or the planting of any orchard or fruit bushes, or to an agreement that the holding, or any part thereof, shall be let or treated as a market garden.

Forms.

21. *Clause prescribing System of Cultivation of Arable Land enforceable only in last Year of Tenancy, but enabling the Landlord, in case of Deviation from System in previous Years, to claim for consequent Injury or Deterioration (if any) under sect. 30, subsect. (2).*

Sect. 30. (*The tenant agrees*) to cultivate the arable land in the four-course rotation, having annually one-fourth thereof in wheat, one-fourth in roots, green crop fed off, or fallow, one-fourth in barley or oats, and one-fourth in clover or seeds, vetches or beans, of which last-named fourth not less than one-half shall be in clover or seeds, and so that no two white straw crops shall immediately succeed each other (*a*).

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22. *Clause not prescribing any particular System of Cultivation except for the last Year, but making the Tenant liable for Injury or Deterioration.*

Sect. 30. (*The tenant agrees*) to cultivate and manage the holding according to the rules of good husbandry and the best standard or system of farming, and so as not to injure or deteriorate the holding, and to leave the same clean and in good heart and condition in the manner set out in the First Schedule hereto (*b*).

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23. *Clause forbidding sale of Hay, Straw, &c. in last Year of Tenancy, and prescribing for Return of Manurial Equivalent.*

Sect. 30. (*The tenant agrees*) not to sell off or remove from the farm any hay, straw, roots, or green crops during the last year of the tenancy, and not to sell or remove any such produce in any previous year, without returning and applying to the holding within months from the sale or removal of

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(*a*) This clause will require modification according to the system of cropping usually adopted on well-cultivated farms in the district.

(*b*) The First Schedule will prescribe the state of cultivation to be adopted in the last year, *e.g.*, one-fifth in wheat, one-fifth in roots or fallow, one-fifth in barley or oats, two-fifths in seeds.

such produce good rotten dung, or guano, bone manure, or other approved manurial substance to the value of *s.* for every ton of hay, *s.* for every ton of straw, and *s.* for every ton of roots or green crop so sold off or removed, such manure or manurial substance to be applied so far as possible to the particular lands the produce whereof shall have been sold or removed. And to keep true accounts and vouchers, which shall be produced to the landlord or his agent when required, of all such produce sold off or removed, and of the equivalent in manure returned to the farm.

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24. *Agreement defining the Manurial Equivalent to be applied under sect.* 30 *when a Course of Cultivation is laid down.*

It is hereby agreed that in order to protect the holding from injury or deterioration, the full equivalent value of crops grown out of or contrary to the rotation hereinbefore agreed to, and sold off or removed, and of crops and produce sold off or removed in contravention of this agreement (*or* lease), is as set out in the Schedule hereto, and the tenant agrees to apply such equivalent in the event of any breach by him of the provisions of this agreement (*or* lease) as to rotation and sale of produce in exercise of the powers in that behalf conferred upon him by sect. 30 of the Agricultural Holdings Act, 1923, or in default to pay to the landlord the market value of such equivalent, if required, as damages in respect of injury or deterioration of the holding.

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25. *Clause requiring an Account of Croppings, Sales, and Return of Manures to be kept* (*a*).

(*The tenant agrees*) to keep and produce at any time for inspection on the request of the landlord or his agent a true

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(*a*) This clause may be useful as tending to protect the land against injury or deterioration from cross-cropping, or sale of hay, straw, &c.

Forms.

account of all croppings upon the farm, and of all hay, straw, roots and green crops sold off or removed from the farm, and of the dates of removal thereof, and also a record of the provision made for the return to the farm of the full equivalent manurial value of all hay, straw, roots and green crops so sold off or removed, and of the provision made to protect the farm from injury or deterioration in consequence of the exercise by the tenant of his rights as to cropping and sale of produce under sect. 30 of the Agricultural Holdings Act, 1923.

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26. *Clause giving the Landlord the Right to claim Compensation for Injury and Deterioration.*

The landlord shall be entitled to compensation from the tenant in respect of any breach by the tenant of any of the agreements on his part herein contained, and for any injury or deterioration of the holding caused by the system of cropping the arable land practised by the tenant or by the sale or removal of any produce of the holding or otherwise, and such compensation shall be deducted from any sum payable to the tenant at the determination of the tenancy by the landlord or incoming tenant, or shall be recoverable otherwise as and at such time as the landlord may deem fit.

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27. *General Form of Tenancy Agreement.*

AGREEMENT made the day of , 19 , BETWEEN A. B., of, &c. (hereinafter called "the landlord," which expression shall include the person or persons for the time being entitled to receive the rent hereby reserved where the context so admits) of the one part and C. D., of, &c. (hereinafter called "the tenant," which expression shall include his executors, administrators, and assigns where the context so admits) of the other part.

The landlord agrees to let and the tenant agrees to take the buildings, farm, and land particularised in the schedule hereto commonly known as Farm in the Parish of (hereinafter called "the farm") subject to the exceptions

and reservations hereinafter mentioned from the day of 19 , from year to year until the tenancy shall be determined by either party giving to the other twelve calendar months' notice in writing, to expire at the end of any year of tenancy.

The rent to be £ per annum payable on the usual quarter days without any deduction except for land tax and landlord's property tax.

Exceptions and Reservations by the Landlord.

1. All mines, minerals, stone, gravel, and sand with right of entry for the landlord and all persons authorised by him to get and work the same, making reasonable compensation for all damage done.

2. All timber and other trees, pollards, saplings, and underwood with right of entry for the landlord and all persons authorised by him to mark, cut, and carry away the same, making reasonable compensation for all damage done.

3. Subject to the Ground Game Act, 1880, and the Ground Game (Amendment) Act, 1906, all game, ground or otherwise, including wildfowl and nests and eggs, with right for the landlord and all persons authorised by him to preserve, hunt, and shoot. (*Omit this clause if sporting rights are not reserved.*)

4. Power to resume possession of any portion of the farm not exceeding five acres in any one year for building, mining, road-making, or any purpose specified in sect. 27 of the Agricultural Holdings Act, 1923, not being the use of the land for agriculture, on giving two months' notice in writing to the tenant.

Agreements by the Tenant.

1. To pay the rent and all rates, taxes, assessments, and outgoings, except landlord's property tax and tithe rent charge.

2. Not to assign or underlet the farm or any part thereof without the landlord's consent in writing.

3. To preserve all timber and underwood.

4. To maintain and keep in good tenantable repair (excepting casualties by tempest or fire not owing to the

Forms.

misconduct of the tenant, his servants or agents) the farmhouse, cottages, and buildings (except roofs and main walls), fixtures, fences, hedges, gates, roads, bridges, and drinking places for cattle or sheep.

5. To cleanse and scour all ditches, watercourses, open drains, and the mouths and outfalls of all underdrains.

6. Not to break up any pasture or meadow land and not to mow any grass land more than once in any one year or more than two years in succession without sufficiently manuring the same, and to keep down all nettles, thistles, tussocks, and to remove mole- and ant-hills.

7. To spread annually on the land all manure made on the farm and at the end of the tenancy to leave any unused manure in convenient heaps without compensation except for labour.

(*Add such clauses as may be required for securing the proper cultivation of the farm, see Forms* 21, 22, 23, 24, 25; *also clause allowing pre-entry according to the custom of the country where the farm is situate.*)

Agreements by the Landlord.

1. To keep the main walls and roofs of the farmhouse and buildings required for the working of the farm in good and substantial repair. (*State other repairs, if any, for which landlord is responsible, and add clauses, if necessary, as to landlord's or incoming tenant's obligations to pay for cultivations and hay and straw left unconsumed at end of tenancy, &c., and as to holding over after determination of the tenancy for realisation of crops of the last year.*)

General Conditions.

1. The landlord shall have power to re-enter and determine the tenancy on non-payment of rent for twenty-one days after the same shall have become due (whether legally demanded or not), or on breach of any of the conditions or agreements herein contained and on the tenant's part to be observed and performed, and also in case the tenant shall become bankrupt or any execution shall be levied upon any of the farm stock, implements, or effects on the premises.

2. If at any time during the tenancy hereby created either the landlord or the tenant shall require a record of the conditions of the holding to be made pursuant to sect. 32 of the Agriculture Act, 1923, the cost of making such record shall be borne by the party requiring the same.

3. (*Insert Form* 26.)

4. (*Insert Forms* 33, 39, *if required.*)

The Schedule above referred to.

(*To contain particulars and acreage of the holding.*)

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28. *Notice by Tenant of Particulars of Claim for Compensation for Improvements and other matters* (*a*).

To A. B. (*landlord*).

TAKE NOTICE that I claim under and in accordance with the Agricultural Holdings Act, 1923, to be paid, on the determination of my tenancy of Farm, the compensation to which I am entitled under the said Act or the custom of the country for the improvements executed by me during my tenancy of the said farm. The particulars of my claims for improvements are as follows:—(*here give particulars, as*) Sect. 16, sub-s. 2.

1. £ for cowshed erected by me in 1921 with your consent.
2. £ being cost of labour and pipes in draining of Blackacre meadow in 19 .
3. £ for unexhausted value of tons of basic slag applied by me to Whiteacre in 19 .
4. £ for manurial value of tons of decorticated cotton cake consumed by my cattle in years 1921, 1922 and 1923.

I also claim compensation for disturbance, viz.:

£ being one year's rent of the farm (*or specify item of loss and expenses incurred, if exceeding one year's rent.*)

(*a*) Particulars of claim to be given to the landlord before the expiration of two months from the termination of the tenancy. The sums claimed need not necessarily be mentioned. See *Jones* v. *Evans* (92 L. J. K. B. 35; (1923) 1 K. B. 12).

Forms.

I further claim to be paid by you for breach of contract under custom and otherwise as mentioned below:—

1. £ for neglect to keep the main walls and roofs of farm buildings in repair according to the contract of tenancy.
2. £ for costs of seeds, manure and acts of husbandry on acres of root crops.
3. £ for ploughing of acres of land in course for wheat.
4. £ for tons of hay and £ for loads of straw left by me on the holding to be paid for at consuming price according to the custom of the country.

Dated . (*Signed*) C. D.

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29. *Particulars of Claim by Market Gardener* (*a*).

To A. B. (*landlord*).

Take Notice that the following are the particulars of my claim under the Agricultural Holdings Act, 1923, and otherwise against you, on the determination of my tenancy of Farm, for compensation:—(*here give particulars, as*)

1. 100 Standard apple and 60 standard plum trees planted in 1918 in field.
2. 300 Gooseberry and 300 currant bushes planted in 1919 in field.
3. Strawberry plants on acres, planted in 1921.
4. Rhubarb plants on acres, planted in 1922 and 1923.
5. tons of purchased manure applied during 1922 and 1923.

(*Signed*) C. D.

(*a*) Particulars of claim to be given to the landlord before the expiration of two months from the termination of the tenancy.

30. *Particulars of Claim by Landlord for Waste or Breach of Covenant* (*a*).

To C. D. (*tenant*).

Sect. 16, sub-s. 2.

TAKE NOTICE that the following are particulars of my claim against you as outgoing tenant of Farm for waste and breach of contract and otherwise as mentioned below:—(*here give particulars, as*)

1. £ for ploughing the grass field of Whiteacre in 1919.
2. £ for injury or deterioration of arable land by taking more than two white straw crops in succession in the years 19 , 19 and 19 from Blackacre in breach of contract.
3. £ for neglect to keep fences in repair.
4. £ for neglect to return to the holding the manurial equivalent of hay and straw sold off in breach of contract.
5. £ for acres excess of coming fallow allowed.
6. £ for failure to keep the homestead and farm-buildings in repair according to covenant in lease.

Dated . (*Signed*) A. B.

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31. *Notice of Damage by Game* (*b*).

To A. B. (*landlord*).

Sect. 11, sub-s. 2.

TAKE NOTICE that my growing wheat in Blackacre (*or as the case may be*) has been damaged by pheasants, and that I intend to claim compensation for the same from you, under the Agricultural Holdings Act, 1923. You are at liberty to inspect the damage done at any time.

Dated . (*Signed*) C. D.

(*a*) Particulars of claim to be given to the tenant before the expiration of two months from the termination of the tenancy. The amounts need not be stated.

(*b*) To be given as soon as may be after the damage is first observed.

Forms.

32. *Notice of Claim for Compensation for Damage by Game* (*a*).

Sect. 11, sub-s. 2.

To A. B. (*landlord*).

TAKE NOTICE that I claim compensation for damage by game to my crops, the particulars whereof are stated below:—(*here give particulars, as*)

Particulars.	£	*s.*	*d.*
Damage by pheasants in November, 1919, to six acres of growing wheat in Blackacre, at 1*l.* per acre	6	0	0
Damage by pheasants in July, 1919, to three acres of barley in Whiteacre, at 2*l.* per acre	6	0	0
	£12	0	0

Dated . (*Signed*) C. D.

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33. *Clause substituting another Period of Twelve Months for the Calendar Year as the Period for making a Claim on Account of Damage by Game.*

Sect. 11, sub-s. 2.

The period of twelve months within one month after the expiration of which any claim for damage by game must be made under sect. 11 of the Agricultural Holdings Act, 1923, shall be the twelve calendar months ending on the day of in any year.

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34. *Notice by Tenant of Intention to claim Compensation for Disturbance* (*b*).

Sect. 12, sub-s. 7.

To A. B. (*landlord*).

TAKE NOTICE that I intend upon quitting my holding, under the notice to quit given by you, to claim compensation

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(*a*) To be given within one month after the expiration of the calendar year, or other period of twelve months agreed upon, in respect of which the claim is made.

(*b*) This notice must be given to the landlord not less than one month before the termination of the tenancy.

for disturbance from you under the provisions of sect. 12 of the Agricultural Holdings Act, 1923. You are at liberty at any time [within the next fortnight] to inspect and make a valuation of my live and dead stock, which are to be sold by auction on the day of . Forms.

Dated . (*Signed*) C. D.

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35. *Notice by Tenant of intention to claim Compensation in respect of Increased Value of the Holding* (*a*).

To A. B. (*landlord*).

Take Notice that I intend to claim on quitting Farm on the termination of my tenancy thereof compensation under sect. 9 of the Agricultural Holdings Act, 1923, for the increase in value of the holding during my tenancy by the standard or system of farming continuously adopted by me.

Dated . (*Signed*) C. D.

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36. *Notice by Landlord of intention to claim Compensation for Deterioration of Holding* (*a*).

To C. D. (*tenant*). Sect. 10.

Take Notice that I intend to claim on the termination of your tenancy of Farm compensation from you for the deterioration of the value of the holding during your tenancy by your failure to cultivate the same according to the rules of good husbandry.

Dated . (*Signed*) A. B.

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37. *Agreement between Landlord and Tenant after Claim for Compensation.*

Agreement entered into on the day of , Between A. B. (*landlord*) of the one part and C. D. (*tenant*), of, &c., of the other part. Whereas the said C. D. has quitted the

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(*a*) Notice of intention to claim under sects. 9 and 10 of the Act must be given in writing before the termination of the tenancy.

Forms.

farm lately held by him as tenant of the said A. B., AND WHEREAS the said C. D. has claimed against the said A. B. under the Agricultural Holdings Act, 1923, for compensation for improvements effected on the said farm by him and for acts of husbandry and other matters, and also for compensation for unreasonable disturbance under sect. 12 of the same Act, [AND WHEREAS the valuers appointed by the said A. B. and C. D. respectively have assessed the value of such claims of the said C. D. according to the particulars in the first part of the Schedule hereto amounting in all to £ the sum of £ ,] AND WHEREAS the said A. B. has claimed against the said C. D. for waste and breach of contract and for injury and deterioration of the holding, [AND WHEREAS the said valuers have assessed the value of such claims of the said A. B. according to the particulars in the second part of the Schedule hereto amounting in all to £ the sum of £ ,] IT IS HEREBY MUTUALLY AGREED between the said A. B. and the said C. D. that there shall not be any arbitration between them under the said Act, AND that the said A. B. shall pay to the said C. D. £ in full satisfaction of all compensation and other sums payable to him under the said Act or otherwise, after allowing for the claims made by the said A. B. as aforesaid in the following instalments (that is to say), £ on Michaelmas Day, 19 , and £ on the 1st of January, 19 , AND that the said A. B. shall be at liberty to deduct the balance of £ being rent owing to him by the said C. D. from the said sum of £ , and shall make no further claim against the said C. D. in respect of waste or breach of contract or otherwise howsoever.

As WITNESS the hands of the above parties.

(*Signed*) A. B.
C. D.

The Schedule above referred to.

PART I.

(*To contain particulars of sums agreed in respect of the tenant's claims.*)

PART II.

(*To contain particulars of sums agreed in respect of the landlord's claims.*)

38. *Consent by Landlord to the Payment of Compensation for Improvements by the Incoming to the Outgoing Tenant.*

Sect. 6.

To C. D. (*incoming tenant*).

I, A. B. (*landlord*), hereby consent to your paying the sum of £ to E. F. (*outgoing tenant*), being the sum payable by me to the said E. F. for compensation for improvements under or in pursuance of the Agricultural Holdings Act, 1923, and under an award dated, &c., and made by, &c. (*or* under an agreement dated, &c., and made between me and the said E. F.).

Dated . (*Signed*) A. B.

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39. *Clause for insertion in Lease or Agreement for Settlement of Claims for Compensation, &c., by Valuation and for Arbitration in Default of Agreement* (*a*).

It is hereby agreed that all valuations in respect of any compensation, damages, or dilapidations to which either party may claim to be entitled under this agreement (*or* lease), or otherwise in respect of the tenancy hereby created, shall be referred to two valuers appointed respectively by the landlord and tenant in the usual manner, and in the event of any difference between them the matter or matters in dispute shall be settled by arbitration, in the manner provided by the Agricultural Holdings Act, 1923.

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40. *Appointment of Valuer to act on behalf of Landlord.*

I, A. B., of, &c. (*landlord*), hereby appoint Mr. , of , to act in my behalf as valuer in the valuation of all claims by Mr. C. D., the outgoing tenant of Farm,

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(*a*) Under sect. 16 of the Act, all questions and differences between landlord and tenant are referred to arbitration. The arbitration clause which was usually inserted in leases and tenancy agreements before this Act is therefore no longer necessary, but this clause, which provides for the usual preliminary valuation, may, if thought desirable, be inserted.

Forms.

against me or the incoming tenant, whether arising under the Agricultural Holdings Act, 1923, or the tenancy agreement, or otherwise, and in the valuation of my claims against the said C. D., whether arising under the said Act, tenancy agreement, or otherwise, and I authorize the said Mr. on my behalf, according to the best of his skill, discretion, and judgment, to value, settle, agree, or compromise with the valuer appointed on the said outgoing tenant's behalf the amount of such claims, wholly or in part, and in case of any difference or dispute arising between the said valuers in respect of any of the said claims, to agree with the said outgoing tenant's valuer upon the appointment of an arbitrator to determine the same and, in default of agreement, to apply to the Minister of Agriculture and Fisheries to appoint an arbitrator.

Dated . (*Signed*) A. B.

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41. *Appointment of Valuer to act on behalf of Outgoing Tenant.*

I, C. D., of (*tenant*), hereby appoint Mr. of to act in my behalf as valuer in the valuation of all claims by me, as outgoing tenant of Farm, against A. B., of , the landlord of the said farm, or the incoming tenant thereof, whether arising under the Agricultural Holdings Act, 1923, or the tenancy agreement, or otherwise, and in the valuation of all claims by the said A. B. or incoming tenant against me, whether arising under the said Act, tenancy agreement, or otherwise, and I authorize the said Mr. on my behalf, according to the best of his skill, discretion, and judgment, to value, settle, agree, or compromise with the valuer appointed on behalf of the said A. B. the amount of such claims wholly or in part, and in case of any difference or dispute arising between the said valuers in respect of any of the said claims, to agree with the said valuer appointed on behalf of the said A. B. upon the appointment of an arbitrator to determine the same, and in default of agreement to apply to the Minister of Agriculture and Fisheries to appoint an arbitrator.

Dated . (*Signed*) C. D.

42. *Appointment of Arbitrator to deal with Claims upon Determination of Tenancy.*

WE HEREBY APPOINT E. F., of , to be arbitrator for the purpose of settling the differences and questions arising between us under the Agricultural Holdings Act, 1923, and otherwise, upon the determination of the contract of tenancy of Farm, lately held by the undersigned C. D. as tenant of the undersigned A. B. Sched. 2, r. 1.

Dated . (*Signed*) A. B.
C. D.

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43. *Appointment of Arbitrator to determine Compensation for Damage by Game during Currency of Tenancy.*

The undersigned A. B. and C. D. hereby appoint E. F., of , to be arbitrator between them for the purpose of determining the compensation (if any) payable under section 11 of the Agricultural Holdings Act, 1923, by the said A. B. to the said C. D. in respect of damage from game to the crops of the said C. D. on Farm, held by him as tenant of the said A. B. during the year ending the day of , 19 .

Dated . (*Signed*) A. B.
C. D.

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44. *Notice requiring Arbitrator to act.*

To E. F. (*arbitrator*).

TAKE NOTICE that I require you to act within seven days from the receipt of this notice in the matter of the arbitration between C. D. and myself under the Agricultural Holdings Act, 1923, in which you have been appointed arbitrator. Sched. 2, r. 2.

Dated . (*Signed*) A. B.

Forms.

45. *Formal parts of Special Case stated by Arbitrator for opinion of County Court.*

No. of 19 .

Sched. 2, r. 10.

In the County Court of holden at .

In the matter of the Agricultural Holdings Act, 1923,

and

In the matter of an Arbitration between

C. D.,
of, &c., Tenant,

and

A. B.,
of, &c., Landlord.

Special Case

stated for the opinion of the Court by E. F., arbitrator in the above-mentioned arbitration:—

1. (*State material parts of lease or tenancy agreement.*)
2. (*State material facts as proved in the arbitration.*)
3. (*State contentions of tenant.*)
4. (*State contentions of landlord.*)

The questions of law submitted for the opinion of the Court are:—

(*State the questions arising in numbered paragraphs.*)

Dated . (*Signed*) E. F.

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46. *Form of Oath for Witness before Arbitrator.*

I swear by Almighty God that I will true answer make to all such questions as shall be asked me touching the matters in question in this arbitration.

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47. *Form of Affirmation for Witness objecting to be sworn.*

I, A. B., solemnly, sincerely and truly affirm and declare that I will true answer make to all such questions as shall be asked me touching the matters in question in this arbitration.

APPENDIX II.

COUNTY COURT RULES AND FORMS (*a*).

Rules.

ORDER OF THE LORD CHANCELLOR, DATED NOVEMBER 27, 1900, AS TO COSTS.

I, the Right Honourable Hardinge Stanley, Earl of Halsbury, Lord High Chancellor of Great Britain, do, by virtue of the powers vested in me by the twenty-seventh section of the Agricultural Holdings (England) Act, 1883, hereby prescribe the following scales of costs for proceedings in the County Court under the Agricultural Holdings (England) Acts, 1883 to 1900, and of costs to be taxed by registrars of County Courts under the said Acts (that is to say):

1. Costs of proceedings in the County Court under the said Acts shall be taxed according to such one of the scales of costs applicable to actions in the County Court as the judge shall direct, and in default of such direction they shall be taxed under column B of such scales.

2. Costs of and incidental to an arbitration and award awarded by an arbitrator under the said Acts shall be taxed according to such one of the scales of costs applicable to actions in the County Court as the arbitrator shall direct, and in default of such direction they shall be taxed under column B of such scales (*b*).

Dated this 27th day of November, 1900.

(*a*) See sect. 58, sub-sect. 3, of the Agricultural Holdings Act, 1923 (*ante*, p. 129), which provides that all Orders, Rules, scales of costs, &c., issued under any enactment thereby repealed shall have effect as if they had been made under that Act.

(*b*) Column B of the higher scale of County Court costs relates generally to cases where the subject-matter or sum recovered exceeds 20*l*. and does not exceed 50*l*. See Annual County Courts Practice, 1923, vol. i., p. 943.

Rules.

COUNTY COURT FEES.

Schedule A.

41. For the hearing of a special case stated under the Agricultural Holdings (England) Act, 1908, and Order XL., Rule 3, twenty shillings; to be paid by the party filing the case, or on whose application the case is stated.

42. In proceedings under the Agricultural Holdings (England) Act, 1908, and Order XL., Rule 4, for the removal of an arbitrator, or to set aside an award, the same fees shall be paid as would be payable in an action for a sum of twenty pounds.

Schedule B.

PART I.

Registrar's Fees.

24. On proceedings under the Agricultural Holdings (England) Act, 1908, or the Allotments and Cottage Gardens Compensation for Crops Act, 1887, and Order XL.—

	£	s.	d.
On every application for the appointment or change of a guardian under Order XL., Rule 1, including, drawing, sealing, and issuing the order on such application	0	5	0
For filing every application or special case under Order XL., Rule 2 (1, 2), Rule 3 (2), or Rule 7 (1)	0	2	6
For every order for short service under Order XL., Rule 2 (3) or Rule 7 (4), including copy for service	0	2	6
If more than one copy of such order to be served, for each additional copy, per folio	0	0	4
For every notice under Order XL., Rule 3 (3), to be paid by the party filing the case, or on whose application the case is stated	0	2	6
For every notice under Order XL., Rule 4 (7), to be paid by the applicant	0	2	6

	£	s.	d.	Rules.
For filing every affidavit under Order XL., Rule 2 (4), Rule 4 (12), or Rule 7 (4)	0	1	0	
When hearing takes place at another Court under Order XL., Rule 4 (16), to the registrar of such other Court, for his duties under that rule	0	10	0	
For settling, sealing, and filing every order under the following rules or any of them, including copy for service:—				
Order XL., Rule 2 (6) Order XL., Rule 3 (5), to be paid by the party filing the case, or on whose application the case is stated Order XL., Rule 4 (15) Order XL., Rule 7 (5)	0	5	0	
If more than one copy of such order to be served, for each additional copy, per folio	0	0	4	
For every notice under Order XL., Rule 5 (2), to be paid by the applicant	0	2	6	
For every taxation of costs of an arbitration and award, including certificates of result of taxation, where the amount to be taxed does not exceed 50*l.*	0	10	0	
And for every additional 50*l.* or fractional part of 50*l.*	0	10	0	
For every taxation of costs on an application for the removal of an arbitrator, or to set aside an award	0	5	0	

Costs.

Drawing.	A.			B.			C.		
	£	s.	d.	£	s.	d.	£	s.	d.
Item 32. Any statement under the Agricultural Holdings Act, including necessary copies....	0	3	0	0	5	0	0	6	8
Or per folio beyond three.....	—			0	1	0	0	1	0

Rules.

THE COUNTY COURT (AGRICULTURAL HOLDINGS) RULES, 1909 (*a*).

Ord. XL.

ORDER XL.

THE AGRICULTURAL HOLDINGS ACT, 1908.

Appointment or change of guardian. 8 Edw. 7, c. 28, s. 32.

1.—(1) An application for the appointment of a guardian of an infant or person of unsound mind not so found by inquisition, for the purposes of the Agricultural Holdings Act, 1908 (in this Order referred to as the said Act), or for the revocation of any such appointment and the appointment of another guardian, shall be intituled in the matter of the Act and of the arbitration or intended arbitration, and shall be made in accordance with the rules for the time being in force as to interlocutory applications.

Affidavit. [*Conf.* Forms 50, 51.]

(2) Any such applications shall be supported by affidavit, and accompanied by a written consent of the proposed guardian to act as such.

Applications *ex parte*.

(3) An application on behalf of an infant or person of unsound mind for the appointment of a guardian may be made *ex parte*.

Applications on notice. [*Conf.* Forms 54, 55, 56.]

(4) An application by any other person interested for the appointment of a guardian of an infant or person of unsound mind shall be made to the judge on notice in writing; and such notice, together with a copy of the affidavit in support of the application, shall three clear days at least before the day in such notice named for hearing the application be served on the person with whom or under whose care such infant or person of unsound mind is residing, and also, in the case of an infant not residing with or under the care of his father or guardian, on the father or guardian (if any) of such infant: Provided that the registrar may dispense with such last-mentioned service. Service may be effected in accordance with the provisions of section 45 of the said Act.

(*a*) See sect. 58, sub-sect. 3 (a), of the Agricultural Holdings Act, 1923 (*ante*, p. 129), which provides that all Orders, Rules, &c. issued under any enactment thereby repealed shall have effect as if made under that Act.

Rules.

(5) An application for the revocation of the appointment of a guardian and the appointment of another guardian shall be made to the judge on notice in writing, which shall be served on the guardian proposed to be removed, or his solicitor, in accordance with the last preceding paragraph. 8 Edw. 7, c. 28, s. 45.

Application for order to state case. 8 Edw. 7, c. 28, Sched. 2, par. 10. Form 415.

2.—(1) An application to the judge under the said Act for an order directing an arbitrator to state in the form of a special case for the opinion of the Court any question of law arising in the course of the arbitration shall be made in Court on notice in writing, which shall be intituled in the matter of the Act and of the arbitration, and shall state concisely the question of law which the applicant desires to be stated for the opinion of the Court, and shall be supported by an affidavit setting forth the facts of the case and the question of law arising thereon.

(2) The application and affidavit shall be filed with the registrar, and shall be marked by the registrar with a reference number, and all subsequent proceedings shall bear the reference number.

(3) Copies of the application and affidavit shall be served by the applicant on the parties to the arbitration, and on the arbitrator, or on their respective solicitors (if any), ten clear days at least before the hearing of the application, unless the judge or registrar shall give leave for shorter service, in which case a copy of the order giving such leave shall be served with the copy of the application. Such service may be effected in accordance with the provisions of section 45 of the said Act; and service on any party who does not appear on the hearing of the application shall be proved before an order is made. 8 Edw. 7, c. 28, s. 45.

(4) Any affidavit intended to be used by any party in opposition to the application shall be filed and a copy thereof shall be served on the applicant or his solicitor four clear days at least before the hearing of the application, or, if leave has been given for short service of the notice of the application, in such reasonable time before the hearing as the date of service of such notice will allow.

(5) A deponent to an affidavit shall on notice from the other side served in accordance with paragraph 3 attend the

Rules.

hearing for cross-examination; and witnesses may be orally examined on the hearing of the application in the same manner as on the hearing of an action.

(6) The order of the judge on the application shall be prepared and settled and signed by the registrar, and shall be sealed and filed, and sealed copies thereof shall be served on the arbitrator in accordance with the provisions of section 45 of the said Act, and on all other persons affected thereby in accordance with Rule 7 of Order XXIII. (*a*).

8 Edw. 7, c. 28, s. 45.

Statement of case.

8 Edw. 7, c. 28, Sched. 2, par. 10.

3.—(1) Where an arbitrator under the said Act states in the form of a special case for the opinion of the Court any question of law arising in the course of the arbitration (whether on his own motion or in pursuance of a direction of the Court to that effect), such case shall be intituled in the matter of the Act and of the arbitration, and shall be divided into paragraphs numbered consecutively, and shall state concisely such facts and documents as may be necessary to enable the judge to decide the questions of law raised thereby. Upon the argument of such case the judge and the parties shall be at liberty to refer to the whole contents of such documents, and the judge shall be at liberty to draw from the facts and documents stated in the case any inference, whether of fact or of law, which might have been drawn therefrom if proved at the hearing of an arbitration.

Signing and filing.

(2) Such special case shall be signed by the arbitrator, and may be filed by the arbitrator or any of the parties to the arbitration with the registrar, and a copy shall be filed therewith for the use of the judge; and such case shall be marked by the registrar with a reference number (which, where a case is stated in pursuance of a direction of the Court to that effect, shall be the same as that on the application for such direction), and all subsequent proceedings shall bear the reference number.

Fixing day for hearing.

(3) On a case being filed the registrar shall transmit a copy thereof to the judge, who shall, as soon as conveniently

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(*a*) Rule 7 of Ord. XXIII. provides for the preparation by the registrar and delivery to the bailiff for service of judgments and orders.

Rules.

may be, appoint a day and hour for hearing the case and instruct the registrar to give notice thereof forthwith to the parties. Such day shall be so fixed as to allow such notice to be given ten clear days at least before the day fixed for the hearings, unless the judge shall, with the consent of all parties, fix an earlier day; and such notices may be served in accordance with the provisions of section 45 of the said Act.

Form 416A.

8 Edw. 7, c. 28, s. 45.

(4) The registrar shall, on the application and at the cost of any party, furnish him with a copy of the case.

Copies of case.

(5) On the hearing of the case an order in accordance with the opinion of the judge shall be prepared and settled and signed by the registrar, and shall be sealed and filed, and sealed copies thereof shall be served on all parties to the arbitration in accordance with Rule 7 of Order XXIII.; and a sealed copy thereof shall be sent in like manner to the arbitrator, for him to proceed in accordance with the opinion of the judge.

Order on hearing.

Form 417A.

(6) The judge may remit the case to the arbitrator for re-statement or further statement.

Remitting case for re-statement.

4.—(1) When application is made to the Court under the said Act for the removal of an arbitrator on the ground of his misconduct, or for an order setting aside an award on the ground of misconduct of the arbitrator, or on the ground that the arbitration or award has been improperly procured, the party making the application shall be called "the applicant"; and all other parties to the arbitration, and the arbitrator, shall be made parties to the application, and shall be called "the respondents."

Application for removal of arbitrator or to set aside award.

8 Edw. 7, c. 28, Sched. 2, pars. 7, 14.

(2) Proceedings shall be commenced by filing an application, intituled in the matter of the Act and of the arbitration, which shall be entered and numbered as a plaint. [The application shall not be made more than twenty-one days from the date of the award unless with the leave of the judge] (*a*).

Proceedings, how commenced.

Form 418A.

(*a*) The words in brackets were inserted as an amendment to the Rule by the County Court (No. 2) Rules, 1922, dated August 2nd, 1922, in consequence of the decision in *McCreagh* v. *Frearson* (1921) (91 L. J. K. B. 365).

Rules.

Particulars and affidavit.

(3) Particulars shall be appended or annexed to the application, containing—

(a) A concise statement of the relief or order which the applicant claims, and of the grounds on which the application is made:

(b) The full names and addresses of the respondent and of the applicant, and of his solicitor, if the proceedings are commenced through a solicitor:

and the application shall be supported by an affidavit setting forth the circumstances in which and the grounds on which the application is made.

Copies for judge and respondents.

(4) The applicant shall deliver to the registrar with the application, particulars, and affidavit a copy thereof for the judge, and a copy for each respondent to be served; and where the application is to set aside an award, the applicant shall file a copy of the award for the use of the judge.

Fixing day of hearing by registrar.

(5) On the filing of the application the registrar shall fix the hearing thereof before the judge for any Court appointed to be held within twenty-eight days from the date of the application, but the date of hearing shall be so fixed as to allow the copies of the application, particulars, and affidavit to be served on the respondents at least ten clear days before the date so fixed.

Fixing day and place of hearing by judge.

(6) If there is no such Court available, the registrar shall send notice of the application to the judge, who shall, as soon as conveniently may be, appoint a day and place for the hearing of the application. Such day shall be so fixed as to allow the copies of the application, particulars, and affidavit to be served on the respondents at least ten clear days before the date so fixed. The place of hearing shall be the place at which the Court is held, or, if the judge so orders, any other convenient Court of which he is judge.

Notice to parties.
Forms 419A, 420A.

(7) On the day for the hearing of the application being fixed, the registrar shall give or send by post notice in writing to the applicant, stating the place at which and the day and hour on and at which the application will be heard, and shall issue the copies of the application, particulars, and affidavit, under the seal of the Court, for service on the respondents, together with notices signed by the registrar

himself and under the seal of the Court, stating the place at which and the day and hour on and at which the application will be heard, and that if the respondents do not attend in person or by their solicitors such order will be made and proceedings taken as the judge may think just and expedient. **Rules.**

Service on respondents.

(8) The copies and notices mentioned in the last preceding paragraph shall be served on each respondent ten clear days at least before the day fixed for the hearing, unless such respondent, or his solicitor on his behalf, agrees to accept shorter service.

By whom service may be effected.

(9) Such copies and notices may be served—

(a) By a bailiff of a Court;

or, at the request of the applicant or his solicitor,

(b) By the applicant, or some clerk or servant in his permanent and exclusive employ; or

(c) By the applicant's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them.

Mode of service. 8 Edw. 7, c. 28, s. 45.

(10) Service may be effected either in accordance with the rules as to service of default summonses, or by registered post in accordance with the provisions of section 45 of the said Act (*a*).

Where service effected otherwise than by bailiff.

(11) Where service is effected otherwise than by a bailiff, a copy of the document served, with the date and mode of service indorsed thereon, shall within three clear days next after the date of service, or such further time as may be allowed by the registrar of the Court issuing such document, be delivered or transmitted to such registrar by the applicant or his solicitor. The applicant or his solicitor shall also deliver or transmit to the registrar an affidavit of the service of such document, according to the form in the Appendix (*b*), with such variations as the circumstances of the case may require. Form 37.

(*a*) See now sect. 53 of the Act of 1923 (*ante*, p. 118).

(*b*) Form 37 is a form of affidavit of service of a default summons. See Annual County Courts Practice, 1923, vol. i., p. 690.

Rules.

Affidavits by respondents.

(12) Any affidavit intended to be used by any respondent on the hearing of the application shall be filed and a copy thereof shall be served on the applicant or his solicitor four clear days at least before the hearing of the application, or, if short service of the notice of the application has been accepted, in such reasonable time before the hearing as the date of service will allow.

Attendance for cross-examination.

8 Edw. 7, c. 28, s. 45.

(13) A deponent to an affidavit shall on notice from the other side served in accordance with the provisions of section 45 of the said Act, attend the hearing for cross-examination; and witnesses may be orally examined on the hearing of the application in the same manner as on the hearing of an action.

Procedure on application.

(14) Subject to the special provisions of this rule, the procedure on an application shall be the same as the procedure in an action commenced in the Court by plaint and summons in the ordinary way, and determined by the judge without a jury; and the statutory provisions and rules for the time being in force relating to such actions shall, with the necessary modifications, apply to such application accordingly; and in the application of such provisions and rules the application shall be deemed to be a summons with particulars annexed, the day fixed for proceeding with the application shall be deemed to be the return day, and the applicant and respondents shall be deemed to be plaintiff and defendants respectively.

Order.

(15) The order of the judge on any application shall be prepared and settled and signed by the registrar, and shall be sealed and filed, and sealed copies thereof shall be served on all persons affected thereby in accordance with Rule 7 of Order XXIII. (*b*); and such order shall be enforceable in the same manner as a judgment or order of the Court.

Where hearing is to take place in another Court.

(16) Where the hearing is to take place at another Court, the registrar of the Court in which the proceeding is pending shall forthwith send notice to the registrar of such other

(*b*) See note to Rule 2 (6) of this Order, *ante*, p. 174.

Court that the judge has ordered the hearing to take place there; and he shall, in sufficient time before the hearing, transmit the papers to the registrar of the Court at which the hearing is to take place, who shall act at the hearing for such first-mentioned registrar, and shall, after the hearing, return the papers to him, with a minute of the order made; and such order shall be prepared, settled, signed, sealed, filed, served, and proceeded on in the Court in which the proceeding is pending, in like manner as if the hearing had taken place there.

Application for taxation of costs of arbitration. 8 Edw. 7, c. 28, Sched. 2, par. 14. [*Conf.* Form 423.]

5.—(1) An application to the registrar to tax the costs of and incidental to an arbitration and award under the said Act shall be made in writing, and shall state on whose behalf the application is made.

Notice of time and place for taxation. [*Conf.* Form 424.]

(2) On receipt of such application, the registrar shall fix a place and time for proceeding with such taxation, and shall give or send by post notice in writing to the applicant and to the parties whose costs are to be taxed, signed by the registrar himself and under the seal of the Court, stating the place, day, and hour at and on which the taxation will be proceeded with, and requiring the parties to attend and produce documents and be examined, and warning them that if they do not attend in person or by their solicitors such order will be made and proceedings taken as to the registrar shall seem fit. Such notices shall be given or sent four clear days at least before the day fixed for the taxation.

Certificate of taxation.

(3) On the completion of the taxation, or, in the case of review by the judge, after such a review, the registrar shall give or send by post to each party a certificate of the result of the taxation, stating the amount at which the costs have been allowed.

Review of taxation by judge. 8 Edw. 7, c. 28, Sched. 2, par. 14.

6. An application to the judge to review any taxation by the registrar shall be made on notice in writing in accordance with the rules for the time being in force as to interlocutory applications.

Rules.

Application for recovery of money awarded to be paid for compensation, &c. 8 Edw. 7, c. 28, s. 14, 50 & 51 Vict. c. 26, s. 17. Form 421A.

7.—(1) An application to the judge under the said Act, or the Allotments and Cottage Gardens Compensation for Crops Act, 1887, for an order that money awarded to be paid for compensation, costs, or otherwise, shall be recoverable as money ordered by a County Court under its ordinary jurisdiction to be paid is recoverable, shall be made in Court on notice in writing, which shall be intituled in the matter of the Act and of the arbitration; and on filing the application the applicant shall produce to the registrar the original award (or a duplicate thereof) and shall file a copy thereof, together with an affidavit intituled as above, verifying both the original and the copy award, and the amount remaining due thereunder.

(2) Where the application is for the recovery of or includes the recovery of any money awarded to be paid for costs, the affidavit shall state the amount at which such costs have been agreed upon or allowed on taxation, and that a demand for payment of such amount, with, in the case of taxation, a copy of the certificate of the result of the taxation, has been served on the party against whom the application is made fourteen days at least before the date of the application. Service of such demand may be effected in accordance with the provisions of section 45 of the said Act.

8 Edw. 7, c. 28, s. 45.

(3) The application shall not be numbered as a plaint, but shall be marked by the registrar with a reference number as a commencement of proceedings, and all subsequent proceedings shall bear the reference number.

(4) A copy of the application and affidavit shall be served on the party against whom the application is made, and proof of such service shall be made, in accordance with paragraph 3 of Rule 2 of this Order; and the provisions of paragraphs 4 and 5 of the last mentioned rule shall apply to proceedings on an application under this rule.

Form 422A.

(5) The order of the judge on the application shall be prepared and settled and signed by the registrar, and shall be sealed and filed, and sealed copies thereof shall be served on all persons affected thereby in accordance with Rule 7 of Order XXIII.; and such order shall be enforceable in the same manner as a judgment or order of the Court.

Rules.

Proceedings for recovery of money agreed to be paid under 8 Edw. 7, c. 28, s. 14; 50 & 51 Vict. c. 26, s. 17, or for settlement of disputes under 8 Edw. 7, c. 28, s. 30.

8. Proceedings for the recovery of money agreed to be paid for compensation, costs, or otherwise, under the said Act, or the Allotments and Cottage Gardens Compensation for Crops Act, 1887, or for the settlement of a dispute under section 30 of the said Act (*a*) shall be by action commenced by plaint and summons in the ordinary way. Particulars of demand shall be filed in any such action, stating concisely the nature of the claim or dispute, and the relief or order which the plaintiff claims.

Application of Order to cases under Acts applying 8 Edw. 7, c. 28.

(See 8 Edw. 7, c. 36, ss. 38, 58.)

9. This Order shall, with the necessary modifications, apply to all cases in which by virtue of any other Act of Parliament questions referred to arbitration are to be determined in accordance with the said Act.

(*a*) See now sect. 36 of the Act of 1923 (*ante*, p. 97).

Forms.

COUNTY COURT FORMS (*a*).

415.

THE AGRICULTURAL HOLDINGS ACT, 1908.

Ord. XL. r. 2.

Application for Order directing Statement of Case.

[*Not to be printed.*]

In the County Court of holden at .

[*Reference Number* .]

In the matter of the Agricultural Holdings Act, 1908,

and

In the matter of an Arbitration between

A. B.,
of, &c., Tenant,

and

C. D.,
of, &c., Landlord.

TAKE NOTICE, that application will be made to the judge at on the day of , 19 , at the hour of o'clock in the noon, on behalf of the above-named , for an order directing Mr. , the arbitrator appointed in the above-mentioned arbitration, to state in the form of a special case for the opinion of the Court the following question of law arising in the course of the arbitration, viz.,

[*State the question of law.*]

And further take notice, that an affidavit of filed herewith [*in the notice served on any party substitute for these words,* a copy whereof is served herewith] will be read in support of the application.

Dated this day of , 19 .

(Signed)
Applicant
[*or* Applicant's Solicitor].

To the Registrar of the Court
and to [*the other parties to the arbitration and the arbitrator, naming them*].

(*a*) See note (*a*), *ante*, p. 172.

416.

THE AGRICULTURAL HOLDINGS ACT, 1908. Ord. XL. r. 3 (3).

Notice of Day on which Case will be heard.

[*Not to be printed.*]

In the County Court of holden at .

[*Heading as in Special Case.*]

TAKE NOTICE, that the judge of this Court will hear the special case stated by Mr. , the arbitrator appointed in the above-mentioned matter, at a Court to be holden at on the day of , 19 , at the hour of in the noon; and that if you do not attend in person or by your solicitor at the time and place above mentioned, such order will be made and proceedings taken as the judge may think just.

You may obtain a copy of the case upon application at my office, and upon prepayment of the costs of such copy.

Dated this day of , 19 .

Registrar.

To

[*the parties to the arbitration*].

417.

THE AGRICULTURAL HOLDINGS ACT, 1908. Ord. XL. r. 3 (5).

Order on Hearing of Case.

[*Not to be printed.*]

[*Heading as in Special Case.*]

The special case stated by Mr. , the arbitrator appointed in the above-mentioned matter [*if stated pursuant to an order of the judge, add:* in pursuance of an order of the judge made in the above-mentioned matter on the day of , 19] coming on for hearing this day:

Forms.

Now, upon reading the said case, and upon hearing the above-mentioned A. B. [*or* Mr. , solicitor [*or* of counsel] for the above-named A. B.] and the above-named C. D. [*or* Mr. , solicitor [*or* of counsel] for the above-named C. D.] [*or if either party does not appear,* no one appearing for the above-named A. B. [*or* C. D.]], and upon debate of the matter, the judge of this Court doth declare his opinion on the question of law stated for the opinion of the Court as follows:—

[*State opinion.*]

And it is ordered that a copy of this order be sent by the registrar to the said Mr. , for him to proceed in accordance with the opinion so declared as aforesaid.

[*Add directions, as to costs, if any.*]

Dated this day of , 19 .

Registrar.

To

[*the parties to the arbitration and the arbitrator*].

418.

Ord. XL. r. 4 (2).

THE AGRICULTURAL HOLDINGS ACT, 1908.

Application for Removal of Arbitrator, or to set aside Award.

[*Not to be printed.*]

In the County Court of holden at .

No. of Plaint .

In the matter of the Agricultural Holdings Act, 1908,

and

In the matter of an Arbitration between

A. B.,
of, &c., Tenant,

and

C. D.,
of, &c., Landlord.

Application is hereby made on behalf of the above-named

Forms.

(1) For the removal of Mr. , the arbitrator appointed in the above-mentioned arbitration, on the ground of his misconduct.

Particulars are hereto appended [*or* annexed].

[*or* (2) To set aside the award made by Mr. , the arbitrator appointed in the above-mentioned arbitration, on the day of , on the ground of the misconduct of the said Mr. [*or* on the ground that the said arbitration [*or* award] was improperly procured].]

Particulars are hereto appended [*or* annexed].

An affidavit of in support of the application is filed herewith.

Application is hereby made to the Court to fix a day for the hearing of the said application.

The names and addresses of the applicant and his solicitor are:—

Of the applicant .

Of his solicitor .

The names and addresses of the respondents to be served with this application are

Dated this day of , 19 .

(Signed)

Applicant

[*or* Applicant's Solicitor].

Forms.

419.

Ord. XL. r. 4 (7).

THE AGRICULTURAL HOLDINGS ACT, 1908.

Notice to Applicant of Day on which Application will be heard.

[*Not to be printed.*]

[*Heading as in Application.*]

TAKE NOTICE, that the judge of this Court will hear the application in this matter at [*state place of hearing*] on the day of 19 , at the hour of in the noon.

Dated this day of , 19 .

To Registrar.
Of

420.

Ord. XL. r. 4 (7).

THE AGRICULTURAL HOLDINGS ACT, 1908.

Notice to Respondents of Day on which Application will be made.

[*Not to be printed.*]

[*Heading as in Application.*]

TAKE NOTICE, that the judge of this Court will hear the application, a sealed copy of which, with the particulars thereunto appended [*or* annexed] and a sealed copy of an affidavit filed in support thereof, is served herewith at [*state place of hearing*] on the day of 19 , at the hour of in the noon; and that if you do not attend either in person or by your solicitor at the time and place above mentioned, such order will be made and proceedings taken as the judge may think just and expedient.

Dated this day of , 19 .

To Registrar.
Of

[*naming all the respondents*].

421.

THE AGRICULTURAL HOLDINGS ACT, 1908. Ord. XL. r. 7 (1).

[*or* THE ALLOTMENTS AND COTTAGE GARDENS COMPENSATION FOR CROPS ACT, 1887.]

Application for Order for Recovery of Money awarded to be paid.

[*Not to be printed.*]

In the County Court of holden at .

[*Reference number.*]

In the matter of the Agricultural Holdings Act, 1908 [*or* In the matter of the Allotments and Cottage Gardens Compensation for Crops Act, 1887]

and

In the matter of an Arbitration between

A. B.,
of, &c., Tenant,

and

C. D.,
of, &c., Landlord.

TAKE NOTICE, that application will be made to the judge at on the day of 19 , at the hour of in the noon, on behalf of the above-named A. B. for an order that the sum of *l.*, being the total amount [*or* the balance of the total amount] of (1) a sum of *l.* which by an award made in the above-mentioned matter on the day of 19 , was awarded to be paid by the above-named C. D. to the above-named A. B., and of (2) a further sum of *l.* for costs which by the said award were awarded to be paid by the said C. D. to the said A. B. , and which costs were subsequently agreed upon [*or* allowed on taxation] at the sum of *l.*, and which said first-mentioned sum of *l.* remains unpaid, shall be recoverable as money ordered by the Court under its ordinary jurisdiction to be paid is recoverable;

Forms.

And forther take notice, that an affidavit of filed herewith [*in the notice to be served on the opposite party, substitute for the words* a copy whereof is served herewith] will be read in support of the application.

Dated this day of , 19 .

(Signed)

Applicant

[*or* Applicant's Solicitor].

To the Registrar of the Court

and to [*naming the party against whom the application is made*].

422.

Ord. XL. r. 7 (5).

THE AGRICULTURAL HOLDINGS ACT, 1908.

[*or* THE ALLOTMENTS AND COTTAGE GARDENS COMPENSATION FOR CROPS ACT, 1887.]

Order for Recovery of Money awarded to be paid.

[*Not to be printed.*]

[*Title as in Application.*]

Upon the application of , and upon reading an award made in the above-mentioned matter on the day of 19 , and an affidavit of sworn on the day of 19 , and filed on the day of 19 , and upon hearing [*the opposite party*] [*or if the opposite party does not appear,* and no one appearing for [*the opposite party*] though proof has been made of his having been duly served with notice of this application];

It is ordered by the judge of this Court that the above-named A. B. do recover from the above-named C. D. the sum of *l.*, being the total amount [*or* the balance of the total amount] of (1) a sum of *l.* which by the said award was awarded to be paid by the above-named C. D. to the above-named A. B. , and of (2) a further sum of *l.* for costs which by the said award were awarded to be paid by the said C. D. to

Forms.

the said A. B. , and which costs were subsequently agreed upon [*or* allowed on taxation] at the sum of *l.*, and which said first-mentioned sum of *l.* remains unpaid, together with the sum of *l.* for the costs of this application; and that in default of payment of the said sums of *l.* and *l.* by the said C. D. to the said A. B. within days from the date of this order, the said sums or so much thereof as shall remain unpaid shall be recoverable as money ordered by this Court under its ordinary jurisdiction to be paid is recoverable.

Dated this day of , 19 .

Registrar.

APPENDIX III.

RULES AND REGULATIONS ISSUED BY THE MINISTER OF AGRICULTURE AND FISHERIES (*a*).

1. Agricultural Holdings (England) Rules of 1923.
2. Agricultural Improvements Regulations (No. 2), 1921.
3. Agricultural Improvements Regulations, 1922.
4. Agricultural Improvements Regulations, 1923.

S.R. & O. 1923, No. 779.

1. The Agricultural Holdings (England) Rules of 1923. (Dated July 6, 1923.)

The Minister of Agriculture and Fisheries, by virtue and in exercise of the powers vested in him under the Agricultural Holdings Act, 1923, hereby prescribes as follows:—

1. An award in an arbitration under the Agricultural Holdings Act, 1923, shall be in the form set forth in the First Schedule hereto, or to the like effect, with such modifications of the terms thereof as circumstances may require.

2. The several forms for proceedings in arbitrations under the said Act, which are set forth in the Second Schedule hereto, shall, if used, be sufficient.

(*a*) See note (*a*), *ante*, p. 172.

Rules.

3. These Rules extend to England and Wales only and shall come into operation on the seventh day of July, 1923.

4. The Agricultural Holdings (England) Rules of 1921 shall remain in force for the purpose only of awards or applications made before the seventh day of July, 1923.

5. These Rules may be cited as the Agricultural Holdings (England) Rules of 1923.

In witness whereof the Official Seal of the Minister of Agriculture and Fisheries is hereunto affixed this sixth day of July, nineteen hundred and twenty-three.

(L.S.) F. L. C. FLOUD,
Secretary.

THE FIRST SCHEDULE TO THE ABOVE RULES.

FORM A.

Form of Award.

AGRICULTURAL HOLDINGS ACT, 1923.

In the matter of a holding known as , [lately] in the occupation of A. B., of (*the* [*quitting*] *tenant*).

Insert name (if any) and description of holding.

To all to whom these presents shall come I, F. G., of , send greeting.

Whereas under the Agricultural Holdings Act, 1923, the claims, questions or differences set forth in the Schedule to this Award are referred to arbitration in accordance with the provisions set out in the Second Schedule to the Act.

And whereas by an appointment, dated the day of , 19 , signed by [*or* on behalf of] the said A. B. and C. D. [*or* sealed by the Minister of Agriculture and Fisheries, *as the case may be*], I, the said F. G., was duly appointed under the Agricultural Holdings Act, 1923, to act as arbitrator for the purpose of settling the said claims,

Rules.

questions or differences in accordance with the provisions set out in the Second Schedule to the Act.

[And whereas the time for making my Award has been extended by the Minister of Agriculture and Fisheries to the day of , 19 .]

Now know ye that I, the said F. G., having taken upon myself the burden of the said reference, and having heard, examined, and considered the witnesses and evidence concerning the said claims, questions or differences so referred to me as aforesaid, do make and publish this my Award of and concerning the same in manner following, that is to say:—

1. I award and determine that the said A. B. is entitled to receive from the said C. D. the sum of pounds shillings and pence, as compensation in respect of the claims set forth in the first part of the Schedule hereto, the amount awarded in respect of each claim being as there stated.

2. I award and determine that the said C. D. is entitled to receive from the said A. B. the sum of pounds shillings and pence, in respect of the claims set forth in the second part of the Schedule hereto, the amount awarded in respect of each claim being as there stated.

3. I determine the questions or differences set forth in the third part of the Schedule hereto in manner following (that is to say): [*Here set out determinations.*]

Note.—The date in paragraphs 4 and 5 must not be later than one calendar month, after the delivery of the award.

4. I award and determine that the said sum[s] of pounds shillings and pence [and pounds shillings and pence] awarded by me shall, subject to the provisions of the Agricultural Holdings Act, 1923, be paid by the said C. D. to the said A. B. on the day after the delivery of this Award; and that the said sum of pounds shillings and pence awarded by me shall, subject as aforesaid, be paid by the said A. B. to the said C. D. on the same day.

5. I award and direct that the costs of and incidental to the arbitration and this Award shall be paid by the said A. B. *or* C. D. *or* by the said A. B. and C. D. in the

following proportions, namely, part thereof by A. B. and part thereof by the said C. D. [*or otherwise as may be directed*], *or* I award and direct that each party shall bear his own costs of and incidental to this arbitration, and shall pay part of my costs of this Award, and that any costs payable by the one party to the other party under or by virtue of this Award shall be so paid on the day after the delivery of this Award. **Rules.**

In witness whereof I have hereunto set my hand this day of , 19 . *See* note above.

Signed by the said F. G. in the presence of

F. G.

The Schedule referred to in the above-written Award.

(Here set forth the claims, questions or differences to be determined. Part I. will contain claims by the tenant; Part II. will contain claims by the landlord; Part III. will contain any other matter. The person making the Award must state separately in the Award the amounts awarded in respect of the several claims referred to him.)

NOTE.—The Award may be endorsed as follows:—

This Award was delivered to A. B. [*or* C. D.] on the day of , 19 . F. G.

THE SECOND SCHEDULE TO THE ABOVE RULES.

FORM B.

(*Application for Appointment by Minister of Agriculture and Fisheries of Arbitrator to determine claims, questions or differences arising between the landlord and tenant of a holding.*)

AGRICULTURAL HOLDINGS ACT, 1923.

TO THE MINISTER OF AGRICULTURE AND FISHERIES.

In the matter of the holding known as , [lately] in the occupation of A. B., of (*the* [*quitting*] *tenant*). Insert name (if any) and description of holding.

Whereas under the Agricultural Holdings Act, 1923, the claims, questions or differences set forth in the Schedule

Forms.

to this application are referred to arbitration in accordance with the provisions set out in the Second Schedule to the Act.

And whereas the said A. B., the tenant of the said holding, and C. D., the landlord thereof, have failed to agree as to the person to act as arbitrator for the purpose of settling the said claims, questions or differences.

And whereas there is not any provision in any agreement between the said A. B. and C. D. relating to the appointment of such arbitrator, and such arbitrator may accordingly be appointed by the Minister of Agriculture and Fisheries on the application in writing of either of the parties.

Now I, the said undersigned, do hereby apply to the Minister of Agriculture and Fisheries for the appointment by him of an arbitrator for the purpose of settling the claims, questions or differences set forth in the Schedule to this application [and for determining all other claims, questions or differences arising out of the termination of the tenancy of the said holding].

(Signature of A. B. [*or* C. D.], or his duly authorised agent.)

19 .

Schedule.

[Here set forth precisely the claims, questions or differences to be determined; *e.g.*,

PART I.

(1) Claims for compensation for improvements.

(2) Short particulars of any further claim by the tenant.

PART II.

(3) Short particulars of any claim by the landlord.

PART III.

(4) Any other question or difference referred to arbitration.]

NOTE.—*Delay in making the appointment will be avoided if the application is signed by or on behalf of both parties.*

Rules.

In any case the names and addresses of both parties and their agents (if any) should be given.

Applications should be made to the Ministry in duplicate.

If the tenancy has terminated the date of the termination should be stated in a covering letter.

It will assist the Ministry in selecting a suitable Arbitrator if a brief statement as to the size and character of the holding is furnished with the application.

FORM C.

(Application to Minister of Agriculture and Fisheries for extension of time for Award.

AGRICULTURAL HOLDINGS ACT, 1923.

Insert name (if any) and description of holding.

TO THE MINISTER OF AGRICULTURE AND FISHERIES.

In the matter of an arbitration under the above-mentioned Act between A. B., of (*the [quitting] tenant*), and C. D. of (*the landlord*), relating to the holding known as [lately] in the occupation of the said A.B.

Whereas the time for making the Award in the said arbitration will expire [*or* expired] on the day of 19 .

Now I, the undersigned, do hereby apply to the Minister of Agriculture and Fisheries to extend the time for making the said Award to the day of 19 .

19 .

[This may be signed by the arbitrator, or by either party to the arbitration or his duly authorised agent.]

NOTE.—*Delay in issuing the extension will be avoided if the application is signed by the arbitrator and by, or on behalf of, both parties. In any case the full names and addresses of both parties and their agents (if any) should be given.*

Rules.

2. THE AGRICULTURAL IMPROVEMENTS REGULATIONS (No. 2), 1921, DATED MARCH 29, 1921, MADE BY THE MINISTER OF AGRICULTURE AND FISHERIES UNDER SECTION 15 (2) OF THE AGRICULTURE ACT, 1920 (*a*).

S. R. & O. 1921, No. 560.

Whereas the Minister of Agriculture and Fisheries is empowered by sub-section (2) of Section 15 of the Agriculture Act, 1920, to substitute such percentages or period as he thinks fit for the percentages and period contained in sub-section (3) of Section 3 of the Agricultural Holdings Act, 1908, having due regard to the current rates of interest.

Now the Minister by these Regulations, having due regard to the current rates of interest, directs as follows:—

1. For the percentages referred to in the said sub-section, namely, five per cent. and three per cent., there shall be substituted seven per cent. and five per cent. respectively.

2. For the period referred to in the said sub-section (namely, twenty-five years) there shall be substituted in the case of any improvement as to which a direction is given under sub-section (1) of Section 15 of the Agriculture Act, 1920, such period not exceeding twenty-five years as the County Agricultural Committee or a Sub-Committee to which the powers in this behalf are delegated, or the Arbitrator, as the case may be, shall in each case direct, having due regard to the time when the improvement to which the direction relates will become exhausted.

3. These Regulations shall apply only to an improvement executed or commenced to be executed, in the year nineteen hundred and twenty-one.

4. These Regulations may be cited as the Agricultural Improvements Regulations, 1921 (No. 2).

(*a*) See now sect. 3, sub-sect. 2, of Agricultural Holdings Act, 1923.

Rules.

3. THE AGRICULTURAL IMPROVEMENTS REGULATIONS, 1922, DATED MARCH 9, 1922, MADE BY THE MINISTER OF AGRICULTURE AND FISHERIES UNDER SECTION 15 (2) OF THE AGRICULTURE ACT, 1920 (10 & 11 GEO. 5, c. 76) (*a*).

Whereas the Minister of Agriculture and Fisheries is empowered by sub-section (2) of Section 15 of the Agriculture Act, 1920, to substitute such percentages as he thinks fit for the percentages contained in sub-section (3) of Section 3 of the Agricultural Holdings Act, 1908, having due regard to the current rates of interest. S. R. & O. 1922, No. 277.

Now the Minister by these Regulations, having due regard to the current rate of interest, directs as follows:—

1. For the percentages referred to in the said sub-section (3), namely, five per cent., and three per cent., there shall be substituted six and a half per cent. and four and a half per cent. respectively, provided that this Regulation shall not affect the operation of the Agricultural Improvement Regulations, 1921 (No. 2) (*b*), in relation to an improvement to which these Regulations apply.

2. These Regulations may be cited as the Agricultural Improvements Regulations, 1922.

In Witness whereof the Official Seal of the Minister of Agriculture and Fisheries is hereunto affixed, this ninth day of March, nineteen hundred and twenty-two.

(L.S.) (Sgd.) F. L. C. FLOUD,
Secretary.

(*a*) See now sect. 3, sub-sect. 2, and sect. 58 of Agricultural Holdings Act, 1923 (*ante*, p. 129).

(*b*) *Ante*, p. 196.

Rules.

4. AGRICULTURAL IMPROVEMENTS REGULATIONS, 1923, DATED MAY 9, 1923, MADE BY THE MINISTER OF AGRICULTURE AND FISHERIES UNDER SECTION 15 (2) OF THE AGRICULTURE ACT, 1920 (10 & 11 GEO. 5, C. 76) (*a*).

S. R. & O. 1923, No. 617.

Whereas the Minister of Agriculture and Fisheries is empowered by sub-section (2) of Section 15 of the Agriculture Act, 1920, to substitute such percentages as he thinks fit for the percentages contained in sub-section (3) of Section 3 of the Agricultural Holdings Act, 1908 (*a*), having due regard to the current rates of interest.

Now the Minister by these Regulations, having due regard to the current rate of interest, directs as follows:—

1. For the percentages referred to in the said sub-section (3), namely, five per cent. and three per cent., there shall be substituted six per cent. and four per cent. respectively; provided that this Regulation shall not affect the operation of the Agricultural Improvements Regulations, 1921 (No. 2) (*b*), or the Agricultural Improvements Regulations, 1922 (*c*), in relation to an improvement to which these Regulations apply.

2. These Regulations may be cited as the Agricultural Improvements Regulations, 1923.

In Witness whereof the Official Seal of the Minister of Agriculture and Fisheries is hereunto affixed this 9th day of May, nineteen hundred and twenty-three.

(L.S.) F. L. C. FLOUD,
Secretary.

(*a*) See now sect. 3, sub-sect. 2, and sect. 58 of Agricultural Holdings Act, 1923.

(*b*) *Ante*, p. 196.

(*c*) *Ante*, p. 197.

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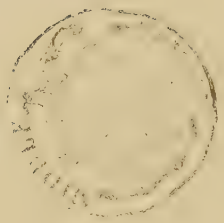

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